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IN THE

Supreme Court of the United States

October Term, 1979

No. 79-

PRESBYTRY OF RIVERSIDE, THE PALM SPRINGS ADMINISTRATIVE COMMISSION FOR THE PRESBYTERY OF RIVERSIDE,

Petitioners,

vs.

COMMUNITY CHURCH OF PALM SPRINGS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION II

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION II

The Presbytery of Riverside and the Palm Springs Administrative Commission for the Presbytery of Riverside respectfully petition that a Writ for Certiorari issue to review the judgment and Opinion of the Court of

Appeal of the State of California, Fourth Appellate District, Division II, entered in this proceeding on February 27, 1979.

OPINIONS BELOW

The Opinion of the Court of Appeal of the State of California is reported at 89 Cal.App.3d 910, and appears in the Appendix hereto (Appendix A-2—A-30). The order of the Supreme Court of the State of California denying hearing (Appendix A-1) is not reported. The opinion of the Riverside County Superior Court, California, (Appendix A-31—A-36), is not reported.

JURISDICTION

The judgment of the Court of Appeal of the State of California, Fourth Appellate District, Division II, was entered on February 27, 1979. The order of the Supreme Court of the State of California denying petitioners' petition for hearing was entered on May 10, 1979. This court granted petitioners to, and including, October 7, 1979, within which to file their Petition for Writ of Certiorari (A-83). This Court's jurisdiction is invoked under 28 U.S.C. Section 1257(3).

QUESTIONS PRESENTED

1. Whether the California court complied with the guidelines of this Court set forth in *Jones v. Wolf*, 99 S.Ct. 3020 (1979), when it applied "neutral principles of law" in the case below.

2. Whether the Constitution of the United Presbyterian Church in the United States of America and the

Articles of Incorporation of respondent church establish that church property, title to which is held by respondent, is held for the benefit of or in trust for the denomination.

3. Whether the use of "neutral principles of law" to award the church property in this case to the breakaway faction results in a violation of the First Amendment.

4. Whether the holding of *Jones v. Wolf* allowing state courts to follow "neutral principles of law" without deference to the decisions of ecclesiastical tribunals should be re-examined in the context of this case which illustrates the impossibility of interpreting church rules of property ownership without deciding questions of doctrine and polity.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Constitution, Amendment 1:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . .

U.S. Constitution, Amendment 14, Section 1:

> . . . nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The issue before the California courts was which of two conflicting claimants within a hierarchical church, the United Presbyterian Church of the United States of America (UPCUSA herein), was entitled to ownership and control of the real property of a local church.

The facts and posture of the instant case are similar to those in *Jones v. Wolf*, 99 S.Ct. 3020 (1979), but there

are critical differences which play an important part in the Court's consideration of this petition.

1. The UPCUSA is a unitary hierarchical church in which each congregation, presbytery and synod are integral parts ruled by a General Assembly[1] which makes decisions and legislates for the whole church. It is not a "generally hierarchical" church organization with which a local church may be "affiliated," as the Presbyterian Church in the United States was described in the majority of *Jones v. Wolf*, 99 S.Ct. at 3028. The two denominations were once united, but were separated during the Civil War when the Presbyterian Church in the Unites States, basically a Southern church, separated from UPCUSA.

2. The constitution of the UPCUSA, its Book of Order, provides in the Chapter on Church Government:

> The radical principles of Presbyterian Church government and discipline are: That the several different congregations of believers, taken collectively, constitute one Church of Christ, called emphatically the Church; that a larger part of the Church, or a representation of it, should govern a smaller, or determine matters of controversy which arise therein; that, in like manner, a representation of the whole should govern and determine in regard to every part, and to all the parts united: that is, that a majority shall govern; and consequently, that appeals may be carried from lower to higher judicatories, till they be finally decided by the collected wisdom and united voice of the whole Church. For these principles and this procedure, the example of the apostles and the practice of the primitive Church are considered as authority.[2]

[1]The congregation, the basic unit of the church, is governed by the session consisting of the minister and the ruling elders. Each session elects a representative to the presbytery and from the presbytery representatives are drawn for the Synod. The General Assembly consists of ministers and ruling elders elected by the presbytery.

3. In 1967, the Presbyterian minister of the Community Church of Palm Springs (Presbyterian), respondent herein, lodged a complaint with the Presbytery of Riverside (Presbytery). The complaint detailed alleged doctrinal changes made in 1967 by the General Assembly, and also alleged trends within the church, to which some members of the Community Church took exception. It asked permission to withdraw from the UPCUSA and take the church property; the Presbytery denied the requests.

4. Acknowledging the jurisdiction and control of the UPCUSA church judicatories over church membership and property, the majority or breakaway faction appealed the Presbytery's denial of its requests to the superior judicatories.

5. Ultimately the matter reached the General Assembly. The General Assembly referred the matter to its Permanent Judicial Commission, which issued its preliminary judgment sustaining the decision of the Presbytery.

[2]Book of Order, Section 35.01. The text of this section was adopted circa 1793 by the General Assembly of the Presbyterian Church. In this quotation the word "radical" is used in its primary meaning of "fundamental and basic," and the word "appeals" is used in a general sense rather than with reference to a case involved in judicial process.

6. On May 21, 1968, the preliminary judgment of the Permanent Judicial Commission was presented to the 180th General Assembly which adopted said preliminary judgment as its final judgment. The full text of the final judgment is attached hereto. See Appendix A-37—A-58.

7. On May 28, 1968, a majority of the members of the Community Church present at a meeting voted to withdraw from the United Presbyterian Church, and on June 8, 1968, they delivered a letter renouncing the Presbytery's jurisdiction over the Community Church. On that same day, the Presbytery voted to suspend the Community Church's Session effective June 30, and elected an Administrative Commission to take the Session's place as the proper governing authority over the local church and its property. This decision of the Presbytery was not challenged or appealed. Those in physical control of the Community Church removed the word "(PRESBYTERIAN)" from its name and refused to relinquish control of the church property to the Administrative Commission.

8. The Constitution of UPCUSA, the Book of Order, provides in the chapter on the Session (the governing judicatory of each particular church consisting of the pastor and the ruling elders):

> Whenever, after a thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint a commission composed of ministers and ruling elders, *with the full power of a session. This*

commission shall take the place of the existing session, if any, which shall cease to act until such time as the presbytery shall otherwise direct. Book of Order, Section 41.15 (emphasis added).

9. The chapter on the Session also provides:

> Subject to the provisions of the Directory for Worship, the session shall have and exercise exclusive authority over the worship of the congregation, including the musical service; and shall determine the times and places of preaching the Word and all other religious services. *It shall also have exclusive authority over the uses to which the church buildings and properties may be put,* but may temporarily delegate the determination of such uses, subject always to the superior authority and direction of the session. Book of Order, Section 41.07 (emphasis added).

10. The Minutes of the UPCUSA General Assembly, including the prior decisions of General Assembly and the church's long tradition, establish that its unitary hierarchical church structure and government are based upon its interpretation of sacred scripture and have always controlled property matters as well as matters of doctrine and polity.

11. The UPCUSA Book of Order provides in the chapter on Incorporation and Trustees:

> A particular church shall not sell, mortgage or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church.

> A particular church shall not lease its real property used for purposes of worship, or lease for more than five years any of its other real property, without the written permission of the presbytery transmitted through the session of the particular church. Book of Order, Section 62.12.

12. The UPCUSA Book of Order also provides in the chapter on Incorporation and Trustees:

> Whenever hereafter a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have, both real and personal, shall be held, used and applied for such uses, purposes, and trusts as the presbytery may direct, limit and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of The United Presbyterian Church in the United States of America. Book of Order, Section 62.11.

Following the events described in Paragraphs 3 through 7 above, petitioner, the Presbytery, instituted this litigation asserting that the Administrative Commission appointed by it pursuant to the Book of Order of the UPCUSA was entitled to possession and use of the church property. The Administrative Commission is also a party plaintiff.

On April 21, 1977, the Superior Court of Riverside County, California, entered its opinion in favor of the breakaway faction. The court noted that legal title to all property of the local church was vested in the local church corporation, a proposition petitioner never challenged. The court then apparently concluded that the various

judicatories of the UPCUSA were without authority to suspend the Session of the local church and place the Administrative Commission in control of the government, corporation and property of the local church.

The California Court of Appeal, in an opinion entered February 27, 1979, affirmed the trial court. The court held, however, that this dispute was "essentially a property dispute" that could be resolved on the basis of "neutral principles of law" and the "formal title" doctrine. Appendix A-15—A-16. It noted, but failed to discuss, the significance of the appointment pursuant to the Book of Order of the Administrative Commission by the Presbytery to take control of the government and property of the local church.

On May 10, 1979, the California Supreme Court denied petitioner's timely petition for hearing and this Petition for Writ of Certiorari followed.

REASONS FOR GRANTING THE WRIT

I.

THE DECISION BELOW IS INCONSISTENT WITH 1ST AMENDMENT PRINCIPLES AS INTERPRETED BY THIS COURT IN *JONES V. WOLF.*

In *Jones v. Wolf*, 99 S.Ct. 3020 (1979), this court found that "the provisions of the constitution of the general church (Presbyterian Church in the United States), the Book of Church Order, concerning the ownership and control of property, failed to reveal any language of trust in favor of the general church." *Jones v.* Wolf, 99 S.Ct. at 3024.

In this case, the constitution of the United Presbyterian Church in the United States of America (UPCUSA), the Book of Order, establishes a structure of

unitary hierarchical church control which encompasses local church property and does contain provisions concerning the ownership and control of property which establish that all church property is held for the benefit of or in trust for the denomination. Furthermore, the Articles of Incorporation of the Community Church acknowledged the structure and control established by the Book of Order.

The Book of Order provides that the UPCUSA is a unitary church governed by ascending judicatories in which all matters of controversy are decided and controlled by the collected wisdom and united voice of the whole church.[3] The Book of Order applies these principles to property specifically. It directs that a corporation be formed by each particular church to receive, hold, encumber, manage and transfer property in every state which permits religious bodies to be incorporated.[4] It vests *control* of the sale, leasing and mortgaging of all church property in the presbytery.[5] The Book of Order also provides for the reversion of the property of a particular church to the presbytery upon the dissolution or extinction of the particular church or upon the abandonment of its work.[6]

[3]Book of Order, Section 35.01.

[4]Book of Order, Section 62.04, provides:

> Each particular church shall be incorporated, cause a corporation to be formed and maintained, or in states forbidding the incorporation of religious bodies elect from its members individual trustees: to receive, hold, encumber, manage and transfer property, and to facilitate the management of its civil affairs in such manner as may be directed by the session of the particular church from time to time and according to this Constitution.

[5]Book of Order, Section 62.12.

[6]Book of Order, Section 62.11.

In this case, the Community Church of Palm Springs (PRESBYTERIAN) became extinct by the "abandonment of its work" as a particular church in the UPCUSA, and the vote to leave the denomination provided "other cause" for finding that it was extinct. Upon the extinction of the particular church the property of the church reverted to the presbytery to be put to whatever use it chose.[7] In this case, the Presbytery of Riverside chose to elect an Administrative Commission and place it in charge of the property so that the loyal faction could continue to meet and worship there.

Interpretation of the Book of Order is a matter for the General Assembly of the UPCUSA. The Book of Order is the constitution of organic law of the church which defines and establishes church polity, discipline and administration. As such, it is a matter for church judicatories and not civil courts to interpret and apply. *Serbian Eastern Orthodox Diocese vs. Milivojevich*, 426 U.S. 696, 710, 721 (1976).

The California Court of Appeal at pages A-25-A-29 of its opinion purports to interpret the provisions of the Book of Order and reaches the conclusion, contrary to the conclusion of the General Assembly of the UPCUSA, that the Community Church of Palm Springs (PRESBYTERIAN), had not become extinct. In its analysis of the provisions of the Book of Order, the Court made particular reference to the phraseology regarding "abandonment" of the work of the church. The Court of Appeal held that the Community Church of Palm Springs had not in fact abandoned its work. Such a decision is an obvious invasion of a doctrinal area, resulting in the impermissible entanglement of the state

[7]See n.5.

in ecclesiastical matters, a result prohibited under the First Amendment. The nature of the work performed by churches and whether they are performing in accordance with the doctrine and polity of the denomination is a matter to be resolved by the ecclesiastical body.

This Court condemned the Illinois Supreme Court for passing on just such a dispute over church polity and church administration in *Serbian* in which it stated:

> the Illinois Supreme Court relied on purported "neutral principles" for resolving property disputes which would "not in any way entangle this court in the determination of theological or doctrinal matters." [Citations]. Nevertheless, the Supreme Court of Illinois substituted its interpretation of the Diocesan and Mother Church constitutions for that of the highest ecclesiastical tribunals in which church law vests authority to make that interpretation. This the First and Fourteenth Amendments forbid. *Serbian* 426 U.S. at 721.

The property reversion provision of Section 62.11 is triggered by the extinction of the particular church as defined by the Book of Order and church law precedent. It is totally outside the purview of civil court powers to interpret church law on such matters of church polity and administration and purport to arrive at a different conclusion than the judicatories of the hierarchical church. *Wolf*, 99 S.Ct. at 3025; *Serbian*, 426 U.S. at 724-725; *Watson*, 80 U.S. (13 Wall.) at 727-729. This provision of the constitution of the denomination deals specifically with church property and specifies that in the instant case the use and control of that property is to be determined by the higher judicatories of the UPCUSA. As this Court stated in *Jones v. Wolf*, such a provision in the

denomination's constitution overcomes any presumption of local majority rule and must be given effect by civil courts. *Wolf*, 99 S.Ct. at 3025-3026, 3027.

A parallel line of UPCUSA church law authority for denominational control of the property of the Community Church is found in the provisions dealing with the powers of the Presbytery to suspend the session of a particular church and to appoint an Administrative Commission to assume control of the government, corporation and property of the local church. This includes the full power of the session, including authority over use of church property. Book of Order, Sections 41.15, 41.07.

Thus, the provisions of the Book of Order followed by the Presbytery in the instant case explicitly vest the control over the use of the property of Community Church in the Administrative Commission. The California courts ignored these provisions and thereby ran afoul of this Court's mandate in *Wolf*. When a religious organization specifies "what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy," *Wolf*, 99 S.Ct. at 3025-3026, it ensures that the dispute over the church property is resolved in accord with the constitution of the denomination and not be left to be resolved by "neutral principles of law."

Prior to its attempted withdrawal from the UPCUSA the Community Church's Articles of Incorporation clearly acknowledged that it was subject to the authority

of the judicatories of the denomination.[8] And further, the Articles of Incorporation included a provision that upon liquidation, dissolution or abandonment of the corporation all church property would "revert, transfer and inure to the benefit of" the UPCUSA.[9]

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[8] "Second: That the Community Church of Palm Springs (Presbyterian), Palm Springs, California, is an unincorporated association and a present existing church organized under and adhering to the doctrines and discipline of the Presbyterian Church in the United States of America . . ." (Through a name change, the word "United" was added to the denomination's name at a date after the Articles of Incorporation were prepared.)

* * * *

"Sixth: That this corporation shall be at all times subject and adhere to the doctrines and disciplines of the Presbyterian Church of the United States of America."

* * * *

"Eighth: That all members of the abovementioned unincorporated association shall be members of this corporation. That the admittance of any members, and the expulsion or suspension of members, shall be governed by the bylaws of the corporation and the doctrine and discipline of the Presbyterian Church of the United States of America." (Plaintiffs' Exhibit No, 8 in Evidence.)

[9] The Articles of Incorporation of the Community Church were amended on February 25, 1957, to add the following:

"Eleventh: That all property now owned or hereafter acquired by said corporation is and shall be irrevocably dedicated to religious and/or charitable purposes, and upon the liquidation, dissolution or abandonment of said corporation, all of such property subject only to prior transfer or encumbrance, in and about the carrying out of such purposes will revert, transfer and inure to the benefit of the Presbyterian Church in the United States of America, a corporation."

The breakaway faction of the Community Church acknowledged the jurisdiction of the hierarchical church judicatories over its doctrinal complaint and request to take the church property out of denominational control. The decisions of the church judicatories, up to and including the final decision of the General Assembly speaking as the voice of the unitary church, reaffirmed what has been the law of the church for centuries, i.e., that all church property is owned by or for the benefit of the UPCUSA. The General Assembly stated:

> "The United Presbyterian Church in the United States of America is one Church with synods, presbyteries, and congregations as parts thereof. We reaffirm the position that ownership of all property in The United Presbyterian Church in the United States of America is shared by all of its members, despite the multiplicity of corporations among its parts. App A-47.

In spite of the acknowledgement of the jurisdiction of church judicatories by the breakaway faction, in spite of the language of the Book of Order which establishes beyond a doubt that the property is held for the benefit of the denomination, in spite of the fact that the duly elected Administrative Commission has the exclusive authority under the Book of Order to control the use of the property, in spite of the decision and opinion of the General Assembly in this matter, prior decisions and resolutions of the General Assembly on the matter and in spite of a tradition relied upon at least since *Watson*, the California courts refused to find a trust in favor of the denomination and refused to acknowledge the authority of the church judicatories to determine who should have the use and control of the local church property.

Furthermore, in arriving at its decision the California Court of Appeal engages in an impermissible exploration and interpretation of the Book of Order and church law on matters involving church polity and administration and purports to overrule the church's judicatories on each issue. This clearly contravenes the ruling in *Watson, Serbian* and *Wolf* that civil courts are not permitted to examine and interpret church law on such matters.

Finally, the court below used the "formal title doctrine" to award title to the local church corporation without articulating which of two opposing factions within a local congregation is entitled to control the corporation. A local majority cannot control in this case, for the Constitution of the UPCUSA specifically provides in cases such as this that the majority that controls is that of the whole Church acting through its judicatories. The General Assembly has spoken for the whole Church in this case.

Consequently, this Court should grant the Petition for Writ of Certiorari to consider whether the Constitution of the UPCUSA and the Articles of Incorporation of the particular church establish that church property, title to which is held by the particular church, is held for the benefit of or in trust for the denomination. This case would provide an excellent opportunity for the court to further examine and define some of the terms and concepts set out in *Wolf*.

II

THE FACTS OF THIS CASE ILLUSTRATE HOW THE APPLICATION OF NEUTRAL PRINCIPLES OF LAW CAN RESULT IN VIOLATIONS OF THE 1ST AMENDMENT AND THIS COURT SHOULD RE-EXAMINE *JONES V. WOLF* IN THE LIGHT OF THESE FACTS.

In *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), this Court was confronted with the same issue that confronts it in this case. The same church is involved although it was then known as Presbyterian Church in the United States of America. In both cases a local congregation wished to leave the denomination and take the local church property with it.[10] As in this case, the dispute in *Watson* arose over questions of trends in church social positions. In *Watson* the issue was slavery. In this case, the issue was doctrinal changes promulgated by the General Assembly in 1967. The focus of the litigation in that case was also on which group of persons, the original session or the session as constituted after the intervention of a Synod Committee, should have control of the government and property of the local congregation. This Court held that:

> the rule of action which should govern the civil courts . . . is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these [hierarchical] church judicatories to which the matter has been carried, the legal

[10]Presbyterians were among those considered dissenters in Colonial days. They were among those who needed the assurance of the First Amendment. Moreover, the distinctive characteristics of the Presbyterian Church are governmental. Other denominations adhere to the same Reformed beliefs as the Presbyterians, but three governmental characteristics must be present for a church to be Presbyterian. The governmental characteristics of differentiation are: (1) the parity of the clergy; (2) substantive participating in church government by the laity; and (3) unity of government, i.e., the parts are integral and comprise the whole.

> tribunals must accept such decisions as final, and as binding on them . . . .
> . . .
> It is of the essence of these religious unions, and of their right to establish tribunals for the decision of questions arising among themselves, that those decisions should be binding in all cases of ecclesiastical cognizance, subject only to such appeals as the organism itself provides for. *Watson*, 80 U.S. (13 Wall) at 727.

In subsequent decisions this Court has made clear that the *Watson* principle of deference to decisions of hierarchical church courts is fully grounded in the First Amendment, *Presbyterian Church v. Hull Church*, 393 U.S. 440, 446-449 (1969); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 116 (1952), and applies to issues of internal church government and policy, as well as to questions of faith or doctrine. *Serbian*, 426 U.S. at 721, 722; *Kedroff*, 344 U.S. at 116. See Also, *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960). Mr. Justice Frankfurter, in his concurring opinion in *Kedroff*, 344 U.S. at 121, characterized the nature of thesedisputes by stating that, "What is at stake here is the power to exercise religious authority."

A. This Case Illustrates the Impossibility of the Civil Courts Examining Church Rules of Property Ownership Without Deciding Questions of Church Polity.

In *Serbian*, this Court reemphasized the constitutional command that civil courts must defer to church court determinations in hierarchical churches. It reversed a state court judgment because,

> it rests upon an impermissible rejection of the decisions of the highest ecclesiastical tribunals of this hierarchical church upon the issues in dispute, and impermissibly substitutes its own inquiry *into church polity and resolutions based thereon of those disputes*. *Serbian*, 426 U.S. at 708 (emphasis added).

The final paragraph of the Court's opinion in *Serbian* summarizes the applicable constitutional rule:

> In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them. *Serbian*, 426 U.S. at 724-725.

The property question in this case arises in precisely the same manner that it arose in *Watson* and *Serbian*, i.e., concerning who is the proper authority to control the church government and consequently its property. Thus, the outcome of the property dispute is based upon the resolution of church polity questions.

The UPCUSA rules of property ownership cannot be applied without deciding such church polity questions as: (1) whether a local church has abandoned "its work;" (2) whether a local church has become "extinct;" (3) whether an Administrative Commission has been duly appointed to replace the local session; (4) what the powers of the Administrative Commission are; etc. The error of the California court in deciding such matters of church

polity is just as violative of the First Amendment as the error of the New York court in *Kreshik* and the error of the Illinois court in *Serbian*. In the instant case, the General Assembly of UPCUSA rendered a final judgment of who was entitled to control the local church government and consequently its property. In *Kreshik*, the Patriarch in Moscow rendered a judgment on the proper occupant of St. Nicholas Cathedral. In *Serbian*, the Council of Bishops rendered a judgment as to the proper ecclesiastical appointee with authority over property. Equal protection of the First Amendment should be accorded the UPCUSA.

B. The Use of the Neutral Principles of Law Approach will Result in the Destruction of the Form of Government Adopted by the UPCUSA.

In its opinion in *Wolf*, this Court held that the First Amendment does not require the states to adopt a rule of compulsory deference to decisions which have been rendered by church judicatories within a hierarchical church. In the place of compulsory deference this Court instructs the states to adopt "neutral principles of law" as a means of adjudicating church property disputes. The facts in this case illustrate the impossibility of applying this rule without violating the First Amendment.

The "neutral principles of law" approach, as announced in *Wolf*, will result in the destruction of the form of government adopted by UPCUSA. UPCUSA is more than a religious organization subscribing to a particular doctrine or creed; it is a form of religious government.[11] Although democratic in nature, its

[11]Book of Order, Section 35.01.

structure provides that the higher judicatories within the unitary, hierarchical church structure will govern and control the lesser judicatories. This concept has been incorporated in its constitution.[12] This form of democratic rule adopted by UPCUSA is similar to the government which has been adopted by the citizens of the United States wherein local governments defer to state and federal governments and lower courts follow the rulings of higher courts.

The church government adopted by UPCUSA has always included rules regarding the control of church property. Control of church property is provided for in the constitution[13] and in legislative pronouncements of the General Assembly of UPCUSA. The constitution of the church has been tested, molded and changed for hundreds of years through legislative pronouncements and decisions of the church tribunals. If this court strikes down a provision of the church's constitution, it strikes down the work product of hundreds of years of free exercise of religion. The provisions of the constitution pertaining to the ownership of property are fundamental precepts upon which the denomination was founded. If the civil courts place a different interpretation on the control of church property, this constitutes a significant infringement upon the free exercise of religion as practiced by UPCUSA and is violative of the First Amendment.

C. The Presumptive Majority Rule Approach of *Jones v. Wolf* Violates the Free Exercise of Religion of Hierarchical Churches in General and UPCUSA in Particular.

[12]*Id.*

[13]Book of Order, Sections 62.12, 62.04.

Since *Watson* this court has followed the practice of first examining the polity of the church within which the dispute arose. If the church was hierarchical in nature, the court deferred to decisions of church judicatories. If the church was congregational in nature, the will of the majority in the local congregation prevailed.[14] The decision in *Wolf* suggested that states apply majority rule first, which is "defeasible upon a showing that the identity of the local church is to be determined by some other means." *Wolf*, 99 S.Ct. at 3027. Thus, all churches are measured by a congregational yardstick.

The decision in *Wolf* could result in the state courts formulating a rule of presumptive majority control at the local congregational level. This would be contrary to the rule established by the constitution, precedent and practice of the UPCUSA. The unitary hierarchical church government in the UPCUSA, following the sacred scriptures and the practice of the primitive church,

[14]*See* Note, *Serbian Eastern Orthodox Diocese v. Milivojevich: The Continuing Crusade for Separation of Church and State*, 18 Wm. and Mary L. Rev. 655, 656 n.10 (1977):

> Hierarchical churches are those in which church authority reposes either in ascending levels of adjudicatory bodies (Presbyterian hierarchicals) or in sublime clergy, such as bishops and popes (Episcopal hierarchies). In contrast, the congregational churches are characterized by autonomous local congregations that govern themselves without control by a higher church body . . . Examples of hierarchical churches of the Presbyterian variety include the Presbyterian, Methodist and some Lutheran churches. The Episcopal type includes The Roman Catholic and Eastern Orthodox Churches. Congregational churches are exemplified by the following churches: Baptist, Disciples of Christ, Quakers and Churches of Christ.

has always provided for control over church property by the denomination acting as one body with a united voice. Any rule permitting a majority of the local congregation to prevail over the decision of the Church as a whole would violate both the Free Exercise and Establishment clauses of the First Amendment.

Although it predates *Wolf*, the decision of the California Court of Appeal in the instant case illustrates the deficiencies of the *Wolf* presumptive majority rule approach. The opinion of the Court of Appeal ignored the decision of the higher church judicatories within UPCUSA. It appears to have accepted the will of the majority of the local congregation while ignoring the will of the majority of the denomination as expressed through the General Assembly. It has imposed upon all members of UPCUSA, save for the members of the Community Church of Palm Springs who voted to withdraw, a form of government to which their consent was never given. The state has thus impermissibly announced and enforced a decision on church polity, which states that the local congregation, rather than the unitary national hierarchical church, is the voluntary association to which the members belong. This a state cannot do without violating the First Amendment.

D. The Use of the Neutral Principles of Law Approach Leaves States Free to Fashion Widely Varying Rules Governing Church Property Ownership Imposing an Intolerable Burden Upon National Hierarchical Churches.

Although the decision in *Wolf* adopts "neutral principles of law" as a means of adjudicating church property disputes, there is little or no insight given into the meaning of that term itself. Beyond very broad

suggestions to the states, no definition of "neutral principles of law" is given. Apparently, any purported "neutral principle of law" can be applied by a state, so long as it is not violative of the First Amendment. The decision appears to transfer to the states the power to decide church property questions with all attendant First Amendment issues, an area of the law uniquely within the jurisdiction of this Court.

To sanction the resolution of ecclesiastical disputes on a state-by-state basis would impose an intolerable burden upon a national hierarchical church. The approach suggested by the court in *Wolf* allows the various states to apply at random any purported neutral principle of law, based on the predilections of the judges within that particular jurisdiction. Such an approach will result in confusion, and ultimately render the survival of the national church impossible.[15]

In the final analysis, the approach suggested by this court in *Wolf* by judicial fiat creates a form of administrative law which must be adhered to by hierarchical churches. The decision apparently says that churches can exercise freedom of religion, so long as the freedom of religion does not touch on the issue of control of church property. Such an exception being carved from the protection of the First Amendment was certainly not a result anticipated by the Founding Fathers. The right to control of the real and personal property of the church is as much a part of the religion as the doctrine, creed and

[15]On December 31, 1978, the UPCUSA consisted of 2,520,368 members organized into 8,627 local churches. The very size of the UPCUSA, standing alone, demonstrates the significance and importance of this case, not to mention the impact which this decision will have on numerous other hierarchical churches.

form of government which the church and its members have chosen to adopt. Decisions relating to doctrine, creed and form of government are inextricably bound up with church property decisions.

CONCLUSION

For all the reasons set forth above, we respectfully urge the Court to grant a Writ of Certiorari, reverse the decision below and grant a hearing to reconsider the function of civil courts in property disputes in unitary hierarchical churches.

Respectfully submitted,

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Attorneys for Petitioners.

APPENDIX

ORDER DUE
May 25, 1979

ORDER DENYING HEARING

AFTER JUDGMENT BY THE COURT OF APPEAL

4th District, Division 2, Civil No. 19079

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

PRESBYTERY OF RIVERSIDE ET AL

v.

COMMUNITY CHURCH OF PALM SPRINGS ET AL

SUPREME COURT
FILED
MAY 10 1979
G. E. BISHEL, Clerk
Deputy

Appellants' petition

for hearing DENIED.

Newman, J., is of the opinion that the petition should be granted.

Tobriner
Acting Chief Justice

I, G. E. BISHEL, Clerk of the Supreme Court of the **State of California, do hereby certify that the preceding is a true copy of an order of this Court, as shown by the records of my office.**

Witness my hand and the seal of the Court this 25th **day of** June **A.D. 19**79

Clerk
By J. Kavanaugh
Deputy Clerk

APPENDIX

CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH DISTRICT
SECOND DIVISION
STATE OF CALIFORNIA

COURT OF APPEAL-FOURTH DISTRICT
FILED
FEB. 27, 1979
ROBERT L. FORD, Clerk
..... Deputy Clerk

PRESBYTERY OF RIVERSIDE, et al.,	
Plaintiffs, Cross-Defendants and Appellants,	
v.	4 Civil 19079
COMMUNITY CHURCH OF PALM SPRINGS	(Super. Ct. Nos. 13680 & 12302
Defendant, Cross-Complainant and Respondent.	**OPINION**

Appeal from a judgment of the Superior Court of Riverside County. John H. Hews, Judge. Affirmed.

Thompson & Colegate, James D. Ward and Jim D. Bishop for Plaintiffs, Cross-Defendants and Appellants.

Schlecht & McCullough and John C. Shevlin for Defendant, Cross-Complainant and Respondent.

Community Church of Palm Springs (hereafter Community Church or local church) was for many years affiliated with United Presbyterian Church in the United States of America[1] (hereafter UPCUSA or general church). In 1968, after unsuccessfully attempting to negotiate a mutually agreeable termination of the relationship, Community Church unilaterally terminated its affiliation with UPCUSA. UPCUSA claims ownership and the right to possession of all of the real and personal property standing in the name of Community Church and possessed by it on the date it terminated its affiliation with UPCUSA. Eliminating procedural complexities of no significance to the appeal, plaintiffs, which are components of UPCUSA, instituted this action against Community Church for ejectment, recovery of property, quiet title and damages for the value of the use of the property at $4,000 per month since June 30, 1968. Community Church answered, denying plaintiffs' claims of ownership and right to possession and alleging several affirmative defenses. It also cross-complained against plaintiffs to quiet its title to the property in dispute. The trial court determined that Community Church is the owner of the property and rendered judgment quieting its title. Plaintiffs appeal.

Appellants contend that the highest judicatories of UPCUSA determined that the property in question belongs to the general church and that the courts of California are compelled by decisions of the United States Supreme Court, decisions of the California Supreme Court and the dictates of the First Amendment to the

[1] UPCUSA is the successor to the Presbyterian Church in the United States of America.

United States Constitution to accept and enforce the rulings of these ecclesiastical bodies; that as a matter of law a member church in a general church organization of hierarchical structure holds title to its property in trust for the general church organization; that, in any event, Community Church holds title to the property in question as trustee of an express trust or a trust implied in fact for the benefit of the general church; that the judgment rendered in the court below would deprive the general church of its property without due process of law; and that the trial court's conclusion that plaintiffs were estopped to assert that Community Church holds title to the disputed property in trust for the benefit of the general church is erroneous as a matter of law. For the reasons that follow we have concluded that all of these contentions save the last, which we do not reach, are without merit.

No contention is made that the trial court's findings of fact are not supported by substantial evidence, and most of the pertinent facts are included in the findings. UPCUSA is a voluntary religious association the components of which constitute one united church, connectional in nature. It is organized in a hierarchical structure of ascending representational levels of ecclesiastical authority called judicatories. That part of its constitution dealing with its system of government is designated "The Book of Order."

Each local church is governed by a body called the session. A session consists of the pastor and the ruling elders elected by the congregation. In turn, the local churches within specified geographical areas are organized into presbyteries. A presbytery consists of all the ministers in the geographical area and at least one ruling elder from each individual church. Each

presbytery supervises the churches within its area and has the authority to, among other things, organize and dissolve churches, remove pastors from their pulpits, and suspend the powers of a session. When the powers of a session have been suspended by a presbytery, the presbytery also has the authority to elect an administrative commission to assume control over the life of the church. Palm Springs is within the territorial jurisdiction of the Presbytery of Riverside.

The next higher judicatory in the system is the synod, which consists of a number of presbyteries, usually all of those in a state. The Synod of Southern California exercises ecclesiastical control over seven presbyteries in Southern California and the State of Hawaii, including the Riverside Presbytery.

Ultimate authority rests in the General Assembly, the commissioners of which are elected annually by the various presbyteries.

The Book of Order requires the formation of a corporation at each level of authority to hold, manage and transfer property and to facilitate the management of its civil affairs. Thus, as is typical, there is a corporation named the Presbytery of Riverside and, in addition, an unincorporated association known as the Presbytery of Riverside. Both are plaintiffs in this action and will hereafter be referred to collectively as Presbytery unless differentiation between the two is significant.

Defendant Community Church of Palm Springs is a nonprofit California corporation incorporated in 1948 by members of an unincorporated association which for a number of years prior to 1917 had maintained in Palm Springs the church known as the Community Church of Palm Springs. In 1917 the unincorporated association

became affiliated with the Presbyterian denomination and thereupon took the name Palm Springs Presbyterian Church. However, shortly thereafter the association discontinued use of the designation Presbyterian and was known simply as the Community Church of Palm Springs or, after incorporation, the Community Church of Palm Springs (Presbyterian). For many years Community Church was the only Protestant church in the community of Palm Springs.

From 1917 until 1967 the pastors of Community Church were placed in the pulpit by the judicatories of UPCUSA, and the pastors and session of Community Church regularly participated in the activities of Presbytery. Members of the session took an oath of office pledging adherence to the doctrine and discipline of the Presbyterian denomination.

Since its inception Community Church has invited to membership persons from all Protestant denominations without any requirement of termination of membership in any other church or denomination and has held itself out as being an interdenominational community church. Persons who joined or attended Community Church who were of Presbyterian background were frequently outnumbered by persons who were members of other denominations. Although for a period of approximately 10 years prior to 1966 each new member was given an application that included a statement that Community Church was affiliated with the Presbyterian denomination, many members were unaware of the affiliation of Community Church with the Presbyterian denomination. Although some of its publications indicated Community Church's Presbyterian affiliation, a substantial majority of such material described Community Church as an interdenomina-

general church, including an amicable resolution of any question as to ownership of property in the name and possession of Community Church. The General Council of the Presbytery of Riverside recommended that Community Church's request be denied "in order that the witness of the United Presbyterian Church in the U.S.A. might be maintained in Palm Springs." On September 23, 1967, Presbytery adopted the Council's recommendation.

Community Church appealed by filing a complaint against the Presbytery with the Synod of California. The complaint was referred to the new Synod of Southern California for adjudication. The Synod referred the complaint to its Judicial Commission. On March 4, 1968, the Judicial Commission sustained the action of the Presbytery.

Thereafter Community Church appealed by filing a complaint with the 180th General Assembly which referred the matter to its Permanent Judicial Commission. The Commission found that the complaint was a proper one for consideration by it but rendered a "preliminary judgment" that the complaint not be sustained. However, it expressly authorized Community Church to present to the 1969 General Assembly its request to withdraw with its property.

Pending presentation of the matter to the 1969 General Assembly, Presbytery attempted to take possession of the physical assets of Community Church, and in early 1968, the congregants of Community Church, by an overwhelming majority, voted to withdraw from the general church. On May 28, 1968, the session of Community Church adopted a resolution to withdraw from the Presbyterian denomination, and on June 8, the session sent a letter to Presbytery renouncing

tional and nondenominational church open to all Protestants.

With the exception of a small amount of money received from the Presbytery of Riverside early in Community Church's history, all funds used to purchase and improve properties of Community Church came from its members of nonmember individuals residing in or visiting the desert area of Riverside County, and not from or through the efforts of plaintiffs. Since 2928 and until recent years, Community Church raised money for its operating budget by soliciting donations from residents of the Palm Springs community of different religious faiths who were approached on the basis of helping to maintain a nondenominational community church. Community Church conducted two major capital fund raising drives during the periods 1957 through 1960 and 1961 through 1963 for the purpose of raising funds to construct major facilities. Those campaigns were conducted and those funds solicited on the representation that Community Church was an interdenominational and nondenominational community Protestant church. Many members, officers and trustees of Community Church would not have sought membership nor solicited funds for Community Church's operating budget or building fund drives had they known that UPCUSA and Presbytery claimed ownership of Community Church's properties.

In about 1967, disputes arose between Community Church and UPCUSA due to several doctrinal changes and a mandate for social action adopted by the General Assembly. As a result, Community Church petitioned the Presbytery of Riverside to appoint a commission to negotiate with Community Church a mutually agreeable termination of the local church's affiliation with the

Presbytery's jurisdiction over Community Church. In addition, a representative of the session was sent to the June 8 meeting of Presbytery to deliver a copy of the session's resolution to withdraw. At its June 8 meeting, Presbytery acted to suspend the powers of the Community Church session, effective June 30, 1968, elected persons to comprise an administrative commission and empowered the administrative commission to act as the session of the "Palm Springs Presbyterian Church." Although not originally named as such, the Administrative Commission of the Presbytery of Riverside was subsequently joined as a party plaintiff in this action.

On July 1, 1968, pursuant to a resolution of its board of trustees on June 18, Community Church amended its articles of incorporation to, among other changes, eliminate "(PRESBYTERIAN)" from its name.

In 1969, Community Church attempted to present to the 181st General Assembly its request to withdraw with its property. However, its request was never considered or decided on the merits because the Committee on Bills and Overtures determined that the "petition is filed by an independent body which has renounced the jurisdiction of the United Presbyterian Church in the United States of America," and was therefore "not filed by a proper petitioner and cannot be considered . . ."

Pervading almost all of appellants' contentions and central to the appeal are their arguments that the judicatories of UPCUSA have determined that the property in dispute is that of the general church and that the trial court was bound to accept the decision of the religious tribunals as binding and conclusive. Not so.

In the first place, there is a serious question whether the issue of ownership of the disputed property was ever

finally determined on its merits by the judicatories of UPCUSA. Community Church's appeal to the 180th General Assembly was found to be proper and the adverse decision of the Permanent Judicial Commission was expressly denominated only a "preliminary judgment." Permission was expressly granted Community Church to present the question to the 181st General Assembly in 1969, but when Community church attempted to do so, its request was rejected not on the merits but on the ground that it could not be considered because it was filed by an independent body which had renounced the jurisdiction of UPCUSA.

Secondly, and more fundamentally, appellants misapprehend the law. It is true "that, whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest . . . church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." *(Watson v. Jones,* 80 U.S. (13 Wall.) 679, 727 [20 L.Ed. 666, 676]; accord: *Serbian Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 710, 713, 714 [49 L.Ed.2d 151 162-163, 165, 96 S.Ct. 2372]; *Horsman v. Allen,* 129 Cal. 131, 138; see *Committee of Missions v. Pacific Synod,* 157 Cal. 105, 128; *Samoan Congregational etc. Church in U.S. v. Samoan Congregational etc. Church of Oceanside,* 66 Cal.App.3d 69, 75-76; *In re Metropolitan Baptist Church of Richmond, Inc.,* 48 Cal.App.3d 850, 858; cf. *Kreshik v. St. Nicholas Cathedral,* 363 U.S. 190 [4 L.Ed.2d 1140, 80 S.Ct. 1037]; *Kedroff v. St. Nicholas Cathedral,* 344 U.S. 94, 115 [97 L.Ed. 120, 136, 73 S.Ct. 143].) However, when the dispute to be resolved is essentially ownership or right to possession of property, the civil courts appropriately adjudicate the controversy

even though it may arise out of a dispute over doctrine or other ecclesiastical question, provided the court can resolve the property dispute without attempting to resolve the underlying ecclesiastical controversy. *(Eldership v Church of God at Sharpsburg,* 396 U.S. 367 [24 L.Ed.2d 582, 583, 90 S.Ct. 499]; *Presbyterian Church v. Hull Church, 393* U.S. 440, 449 [21 L.Ed.2d 658, 665, 89 S.Ct. 601]; *In re Metropolitan Baptist Church of Richmond, Inc., supra,* 48 Cal.App.3d at pp. 858-859; see *Serbian Orthodox Diocese v. Milivojevich, supra,* 426 U.S. at pp. 709-710 [49 L.Ed. 2d at p. 163, 96 S.Ct. 2372]; *Samoan Congregational etc. Church in U.S. v. Samoan Congregational etc. Church of Oceanside, supra,* 66 Cal.App.3d at pp. 75-77; cf. *Wheelock v. First Presb. Church,* 119 Cal. 477, 482.)

The rule was definitively stated in *Presbyterian Church v. Hull Church, supra:* "[T]he First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes. It is obvious, however, that not every civil court decision as to property claimed by a religious organization jeopardizes values protected by the First Amendment. Civil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property. And there are neutral principles of law, developed for use in all property disputes, which can be applied without 'establishing' churches to which property is awarded. But First Amendment values are plainly jeopardized when church property litigation is made to turn on the resolution by civil courts of controversies over religious doctrine and practice. If civil courts undertake to resolve such controversies in order to adjudicate the property dispute, the hazards are ever present of inhibiting the free development of religious doctrine and of implicating

secular interests in matters of purely ecclesiastical concern. . . . [T]he [First] Amendment therefore commands civil courts to decide church property disputes without resolving underlying controversies over religious doctrine. Hence, States, religious organizations, and individuals must structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions." (393 U.S. at p. 449 [21 L.Ed.2d at p. 665]; accord: *Eldership v. Church of God at Sharpsburg, supra,* [both per curiam and concurring opns.]; *In re Metropolitan Baptist Church of Richmond, Inc., supra.)*

Contrary to appellants' argument, the more recent *Serbian Orthodox* decision is not to the contrary. The central issues in that case were the identity of the "true Diocesan Bishop" and the propriety of the reorganization by the general church of a single diocese into three dioceses. (426 U.S. at pp. 707-708 [49 L.Ed.2d at pp. 161-162].) The court expressly found that the identity of the true Bishop was essentially a religious question although it incidentally affected control of property. (426 U.S. at pp. 709, 717 [49 L.Ed.2d at pp. 162-163, 167].) It also expressly determined that the reorganization of the diocese involved a religious dispute, stating: "[It] involves a matter of internal church government, an issue at the core of ecclesiastical affairs. . . ." (426 U.S. at p. 721 [49 L.Ed.2d at p. 170].) Thus the court held the decisions of the ecclesiastical tribunals final and conclusive. However, the court expressly quoted with approval the above-quoted language from *Presbyterian Church v. Hull Church.* (426 U.S. at p. 709-710 [49 L.Ed.2d at p. 163].)

The seminal decision, *Watson v. Jones, supra,* 80 U.S. (13 Wall.) 679, a pre-*Erie R. Co. v. Tompkins*

diversity decision decided before the application of the First Amendment to the states (see *Presbyterian Church v. Hull Church, supra,* 393 U.S. at p. 445 [21 L.Ed.2d at p. 663]), must now be viewed in the perspective of the later decisions in *Presbyterian Church v. Hull Church, Eldership v. Church of God at Sharpsburg, and Serbian Orthodox Diocese v. Milivojevich.* (See *Samoan Congregational etc. Church in U.S. v. Samoan Congregational etc. Church of Oceanside, supra,* 66 Cal.App.3d at p. 74, et seq.) However, again contrary to appellants' arguments, the decision in *Watson v. Jones* even in its pristine state did not preclude civil courts from adjudicating church disputes that are essentially property disputes only incidentally involving or arising out of ecclesiastical disputes. In *Watson v. Jones* the court was asked to decree the termination of an implied trust because of alleged departures from doctrine by the general church. (See *Presbyterian Church v. Hull Church, supra,* 393 U.S. at p. 445 [21 L.Ed.2d at p. 663].) Thus the dispute involved in the case was purely ecclesiastical. The court would have been required to determine what the orthodox doctrine was, what changes in doctrine had been made, and whether such changes as were found constituted such substantial or fundamental departures from the orthodox doctrine as to constitute a violation of the trust. (See *Presbyterian Church v. Hull Church, supra,* 393 U.S. at pp. 449-450 [21 L.Ed.2d at p. 666].) Thus the court was called upon "to determine matters at the very core of a religion—the interpretation of particular church doctrines and the importance of those doctrines to the religion. Plainly, the First Amendment forbids civil courts from playing such a role." *(Presbyterian Church v. Hull Church, supra.)* Therefore, although the court in *Watson v. Jones* purported to speak of "questions . . . concerning the rights to property held

by ecclesiastical bodies" and to divide them into three classes (80 U.S. at pp. 722-723 [20 L.Ed. at p. 674]), the case clearly involved an essentially ecclesiastical dispute.

We find nothing of significance indicating a contrary rule in *Committee of Missions v. Pacific Synod, supra,* 157 Cal. 105, *Horsman v. Allen, supra,* 129 Cal. 131, or *Wheelock v. First Presb. Church, supra,* 119 Cal. 477. The essential question in the *Pacific Synod* case was the validity of a merger between the Presbyterian Church in the United States of America and the Cumberland Presbyterian Church. (157 Cal. at p. 110.) The court expressly stated: "The regularity and validity of the union of that church with another of the same faith and form of government was essentially a question of ecclesiastical law." (157 Cal. at p. 129.) Strangely, even though the court expressly approved the principle laid down in *Watson v. Jones* that civil courts are bound by decisions of ecclesiastical tribunals in ecclesiastical disputes (157 Cal. at p. 128), the court stated: "We have preferred to decide the case . . . without regard to the decisions of the general assembly . . . upon these questions. We have supposed that this would be more satisfactory to the parties concerned." (157 Cal. at pp. 127-128.) In any event the dispute was clearly ecclesiastical.

Although the immediate purpose of the action in *Horsman v. Allen* was to determine the respective rights of the parties to the use and control of two tracts of land, the determining question was which of two sets of trustees elected by two religious bodies, both claiming to represent the true Church of the United Brethren in Christ, represented the "true" church. As the court stated: "The sole question, therefore, is as to the identity of the church. If the radical is the true church, the plaintiffs are entitled to recover; otherwise not." (129 Cal. at p. 135.)

Thus the controlling question was clearly ecclesiastical.

In *Wheelock v. First Presb. Church* the congregation of the First Presbyterian Church of Los Angeles divided into two factions. One faction petitioned the governing presbytery to divide the church into two and to make an equitable division of a fund of money that had been accumulated to purchase a new church site. The presbytery and a commission appointed by it did so. The court upheld the action of the presbytery, indicating that the division of the church into two was an ecclesiastical matter. The court did not definitively determine the nature of the dispute insofar as apportionment of the accumulated fund was concerned. It stated: "It may be conceded, for the purposes of the case, that neither the Presbytery nor the commission appointed by it had the power to divide and apportion the money held by the church corporation; and that the disposition of those moneys were matters for civil courts, and that ecclesiastical decrees bearing upon such disposition are not binding upon judicial tribunals." (119 Cal. at p. 482.) The court then proceeded to apply general principles of trust law and concluded that the fund of money should be apportioned on the same basis as that suggested by the presbytery and its commission. (119 Cal. at pp. 483-484.) Thus the court in fact determined the apportionment question by the application of "neutral principles of law." (See fn. 2,*infra,* and preceding and following text.)

It is unquestionably true that the present dispute over the ownership and right to possession of the property held by Community Church arose out of an underlying controversy involving largely questions of religious doctrine. However, the dispute to be decided by the court in this case is essentially a property dispute; the only relationship between the religious controversy and

the dispute in the case at bench is that the latter arose out of the former; the property dispute may be resolved without the necessity of becoming involved with or attempting to resolve the underlying ecclesiastical controversy; and the trial court acted with propriety in determining the case on the basis of "neutral principles of law" and the "formal title" doctrine.[2]/ As observed by the court in *In re Metropolitan Baptist Church of Richmond, Inc., supra,* 48 Cal.App.3d at p. 859; " 'The relevant inquiry must be whether the court can resolve the property dispute on the basis of neutral principles of law which do not involve the resolution *by the court* of ecclesiastical issues . . . [A]s long as the court does not have to resolve the doctrinal propriety [of a church's action] in order to determine who has legal control of the property, there is no unconstitutional intervention by the state in Church affairs.' " (Orig. emphasis.)

Appellants' attempt to analogize the dispute in the case at bench to those confronting the courts in the *Serbian Orthodox, Horsman* and *Wheelock* cases and to characterize it as essentially ecclesiastical is unavailing. As already indicated, the controlling questions in those cases turned on disputes directly involving religious doctrine or church polity, organization or structure.

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[2]/ The expression "neutral principles of law" apparently originated in the decision in *Presbyterian Church v. Hull Church, supra,* 393 U.S. at p. 449 [21 L.Ed.2d at p. 665]. The expression "formal title' doctrine" was used in the celebrated concurring opinion of Mr. Justice Brennan in *Eldership v. Church of God at Sharpsburg, supra,* 396 U.S. at p. 370 [24 L.Ed2d at p. 585].) What is meant by these expressions is nothing more than those principles or rules of law "developed for use in all property disputes" whether or not the litigants are religious associations or corporations. (See *Presbyterian Church v. Hull Church, supra; In re Metropolitan Baptist Church of Richmond, Inc., supra,* 48 Cal.App.3d at pp. 858-859.)

Appellants' arguments are apparently based on the authority of the Presbytery to fill the pulpit of Community Church and to suspend the powers of its session, on Presbytery's determination that the Administrative Commission selected by it is the proper body to control the life of Community Church and on the conclusion that the question presented is whether plaintiff Administrative Commission or the corporate defendant constitutes the "true" governing body of a local church within UPCUSA. However, this reasoning disregards a number of essential facts. When Presbytery acted on June 8, 1968, to suspend the powers of the Community Church session effective June 30, 1968, Community Church had already terminated its relationship with UPCUSA and withdrawn from the Presbyterian denomination. It is undisputed that a local church within UPCUSA may withdraw and terminate its affiliation. The only dispute here concerns ownership and right to possession of property in the name and possession of the local church when that right is exercised. There is no question in this case as to which body is the true Presbyterian Church in Palm Springs. Community Church has renounced its affiliation with the Presbyterian denomination and does not claim to be a Presbyterian church or the representative of UPCUSA in Palm Springs. Community Church freely acknowledges that Presbytery and the Administrative Commission control the life of the Presbyterian church in Palm Springs. In truth, there is no existing religious or ecclesiastical controversy. There was one, it is true, which gave rise to the present dispute over the property in the name and possession of Community Church, but in resolving the property dispute it is not required that the court involve itself in or attempt to resolve the underlying religious controversy. Community Church ended that

controversy when it withdrew from UPCUSA and terminated its relationship with the Presbyterian denomination.

In their opening brief appellants make an argument designated III in which they appear to contend that, apart from the cited cases, a judgment confirming title of the disputed property in Community Church would violate the dictates of the First Amendment by interfering with the free exercise of religion as practiced by UPCUSA, its constituent organizations and their members, and would constitute an establishment of religion by preferring one religion, that espoused by Community Church, to another, that espoused by the adherents of UPCUSA. Of course, the courts of California, in ascertaining the parameters of state action permissible under the First Amendment applicable to the states through the Fourteenth, are bound by the authoritative interpretations of the First Amendment enunciated by the United States Supreme Court. As discussed earlier, the decisions of the United States Supreme Court have expressly indicated that the mandates of the First Amendment are not violated by civil court resolution of property disputes involving religious organizations so long as that resolution does not depend on the court's attempting to resolve ecclesiastical controversies. Moreover, appellants' arguments overlook a fundamental fact. Any judgment the court below might have rendered would have had some effect upon the free exercise of religion and could be interpreted to prefer one religion over another. Impressing a trust upon the property in the name and possession of Community Church in favor of plaintiffs would no less have interfered with the right of the Community Church congregation freely to exercise religion as plaintiffs claim the present

judgment interferes with the right of UPCUSA's membership freely to exercise religion. A judgment in favor of plaintiffs in the court below would no less have preferred the religion of their congregants over that of the congregants of Community Church than the present judgment prefers the religion of the congregants of Community Church over that of plaintiffs. (See *Maryland and Virginia Eldership v. Church of God* (Md. 1969) 254 A.2d 162, 170 [decision following remand from the U.S. Sup. Ct.]; app. dismissed for want of a substantial federal question in *Eldership v. Church of God at Sharpsburg, supra,* 396 U.S. 367 [24 L.Ed.2d 582, 90 S. Ct. 499].)

We turn to appellants' contention that as a matter of law the property of a local church which is part of a general church having a hierarchical structure is held in trust for the general church. There is no question but that the properties of a religious, nonprofit corporation are held upon a trust. (*Lynch v. Spilman,* 67 Cal.2d 251, 260; *Committee of Missions v. Pacific Synod, supra,* 157 Cal. at p. 127; *Wheelock v. First Presb. Church, supra,* 119 Cal. at pp. 483-484; *Samoan Congregational etc. Church in U.S. v. Samoan Congregational etc. Church of Oceanside, supra,* 66 Cal.App.3d at pp. 73-74; see *Horsman v. Allen, supra,* 129 Cal. at p. 136.) The present dispute concerns the uses for which the property is held, and the identity of the beneficiaries of the trust—the congregants of the local church, or the general church and/or, perhaps, its congregants.

For support of their contention that the general church and, perhaps, its congregants are as a matter of law the beneficiaries of the trust, appellants rely on language found in *Wheelock v. First Presb. Church, supra,* 119 Cal. at p. 483, and *Watson v. Jones, supra,* 80

U.S. at p. 720 [20 L.Ed. at p. 673]. Analysis of the context in which the courts used the language relied on by appellants demonstrates that the language does not support appellants' contention and in fact supports the position of Community Church.

In *Wheelock*, quoting from *Winebrenner v. Colder*, 43 Pa. 244, 249, the court said in part: " 'Whatever property stands in its name is seised to the use of the church proper. It is a trustee holding property for the use and enjoyment of the church, and every member of the church is beneficiary of that trust.' " (119 Cal. at p. 483.) Appellants take the word "church" in the quoted language to refer to the general church as opposed to the local church. In this they are mistaken. The court in using this language was not discussing any problem involving the relationship between the general church and the local church; it was discussing the relationship between the local church's ecclesiastical body (i.e., the session) and the local church corporation or board of trustees in whom is vested title to the local church's property. (See 119 Cal. at pp. 482-483.) Thus it is clear that the word "church" and the words "member of the church" refer to the local church and a member thereof. In essence what the court was saying was that the directors or trustees of the corporation hold title to the property of the church in trust for the local church and every member thereof. Any doubt about the matter is resolved by the language of the next paragraph referring to the Central Presbyterian Church, one of the two churches into which the First Presbyterian Church of Los Angeles had been divided by the Presbytery. The court stated: *"Its members* were beneficiaries of the trust before the Presbytery divided the church and in justice and equity must stand in the same position after division." (119 Cal. at p. 483;

emphasis added.) Continuing, the court said: "The Presbytery had power to divide the old church into two other and new churches. It is [sic] exercised that power. Such exercise simply *made two church beneficiaries instead of one."* (119 Cal. at pp. 483-484; emphasis added.) The two churches referred to were the two local churches into which the First Presbyterian Church of Los Angeles had been divided by the Presbytery. Thus, properly read, *Wheelock* stands for the proposition that the property of a local church, even one that is part of a general church organization of hierarchical structure, is held in trust by the religious nonprofit corporation for the benefit of the local church congregation.

While some of its language is ambiguous, the decision in *Committee of Missions v. Pacific Synod, supra,* 157 Cal. at pp. 126-127, appears to be to the same effect. The trial court found "that the property consists of houses of worship held by the plaintiff corporation for the members of the local churches, respectively, which occupy and use the same." (157 Cal. at p. 127.) The Supreme Court apparently agreed, for it affirmed the judgment of the trial court and, in addition, earlier in the opinion stated: "It [the plaintiff corporation formed by Pacific Synod] has acquired and now holds various parcels of real property *in trust for the use of local congregations within the synod. . . ."* (157 Cal. at p. 110; emphasis added.) Further, in its reasoning the court relied upon the fact that "[e]ach particular church . . . established by the Cumberland Church, retains its individual and separate integrity and existence and *its property rights,* after the union fully as before. . . ." (157 Cal. at p. 125; emphasis added.)

Some language used by the court in *Horsman v. Allen, supra,* 129 Cal. at p. 136, indicates a similar

conclusion by that court. Speaking of the tripartite classification made by the court in *Watson v. Jones*, the court said: "The first is where property, by the express terms of the grant, 'is devoted to the teaching, support, or spread of some specific form of religious doctrine or belief'; the second, where it is held by or in trust for an independent congregation; and the third, *where it is held by or in trust for a congregation or other association subordinate to some general church organization.*" (Emphasis added.)

The language from *Watson v. Jones* relied on by appellants is the court's statement: "The trustees obviously hold possession for the use of the persons who by the constitution, usages and laws of the Presbyterian body, are entitled to that use." (80 U.S. at p. 720 [20 L.Ed. at p. 673].) The language states a truism, but it leaves unanswered the vital question of the identity of the persons entitled to use of the property by the constitution, usages and laws of the Presbyterian body. We observe at once that the statement does not support appellants' contention that the determination to be made is one of law. The court's reference to usages of the Presbyterian body suggests the question might well be one of fact. (Cf. *Rosicrucian Fellow v. Rosicrucian Etc. Ch.*, 39 Cal.2d 121, 133-135, 138.) Moreover, the language of the court immediately preceding and following the quoted statement clearly indicates that the word "trustees" in the quoted statement refers to the trustees of a local church and that the "persons" the court had in mind were the congregants of the local church. The significant language preceding the quoted statement is: ". . . [B]y the acknowledged rules of the Presbyterian Church, the trustees were the mere nominal title holders and custodians of the church property, and other trustees

were, or could be elected *by the congregation*, to supply their places once in every two years. 2. That in the use of the property for all religious services or ecclesiastical purposes, the trustees were under the control of the church *session*. 3.That by the constitution of all Presbyterian churches, the *session*, which is the *governing body in each*, is composed of the ruling elders and pastor. . . ." (80 U.S. at p. 720 [20 L.Ed. at p. 673]; emphasis added.) Immediately following the statement relied on by appellants appears the following: "They are liable to removal by *the congregation for whom they hold this trust*, and others may be substituted in their places. They have no personal ownership or right beyond this, and are subject in their official relations to the property, to the control of the *session* of the Church." (80 U.S. at pp. 720-721 [20 L.Ed. at p. 673]; emphasis added.) The words "congregation" and "session" unmistakably indicate the reference is to the local church and the local church congregation.

Moreover, the effect of *Watson v. Jones* was the rejection or repudiation of the very doctrine that appellants appear to invoke—the implied trust doctrine holding that church property was the subject of an implied trust in favor of those who adhered to the faith of the founders of the church. (See *Watson v. Jones, supra*, 80 U.S. at pp. 727-729 [20 L.Ed. at pp. 676-677]; *Judicial Intervention in Church Property Disputes—Some Constitutional Considerations*, 74 Yale L. J. 1113, 1114, et seq.) A concomitant of this implied trust doctrine was the necessity for the court to examine in great detail questions of religious doctrine in its determination as to which group of claimed beneficiaries continued to adhere to the "true" faith and which had departed from the "true" doctrine. (See *Presbyterian Church v. Hull Church*,

supra, 393 U.S. at pp. 449-450 [21 L.Ed.2d at p. 666]; *Maryland and Virginia Eldership v. Church of God, supra*, 254 A.2d at p. 165; *Presbyterian Ch. in U.S. v. Eastern Heights Pres. Ch.* (Ga. 1969) 167 S.E.2d 658, 659 [decision on remand from the U.S.Sup.Ct. in *Presbyterian Church v. Hull Church, supra*, 393 U.S. 440 [21 L.Ed.2d 658, 89 S.Ct. 606].) That is precisely what *Watson v. Jones* held a civil court is not permitted to do. (80 U.S. at pp. 733-734 [20 L.Ed. at p. 678]; see *Presbyterian Church v. Hull Church, supra; Maryland and Virginia Eldership v. Church of God, supra; Presbyterian Ch. in U.S. v. Eastern Heights Pres. Ch., supra.)* If the implied trust doctrine was ever the law in this state (cf. *Baker v. Ducker*, 79 Cal. 365, 373-374), it appears to have been repudiated in *Rosicrucian Fellow v. Rosicrucian Etc. Ch., supra*, 39 Cal.2d at pp. 133-134, where, in rejecting an argument based on adherence to the "original structure," the court stated: "The basis question in a controversy such as this should be the ownership of civil and property rights as shown by the conduct and acts of the parties. A classification based on a formula is not of much assistance. . . ."

Thus we find no support for appellants' contention in the decisional language relied on by them. On the contrary, the applicable decisions establish that the property of a religious nonprofit corporation is held upon a trust " 'to carry out the objects for which the organization was created.' " (*Lynch v. Spilman, supra*, 67 Cal.2d at p. 260; *Samoan Congregational etc. Church in U.S. v. Samoan Congregational etc.Church of Oceanside, supra*, 66 Cal.App.3d at p. 74; cf. *Wheelock v. First Presb. Church, supra*, 119 Cal. at pp. 483-484; *Baker v. Ducker, supra*, 79 Cal. at pp. 373-374.) Although the original articles of incorporation of Community Church recited

that it was a "church organized under and adhering to the doctrines and discipline of the Presbyterian Church in the United States of America" and provided that the corporation "shall be at all times subject and adhere to the doctrines and discipline of the Presbyterian Church in the United States of America," its stated purpose was "the establishment and maintenance of a place or places for worship and instruction, and for the dissemination and spreading of the *Christian Doctrine* among the people of the world. . . ." (Emphasis added.)

Except for one argument separately set forth, the contentions of appellants which we interpret as claiming that the evidence establishes an express or implied-in-fact trust are so admixed with their contentions based on the First Amendment and the *Serbian Orthodox* and *Watson v. Jones* decisions that it is difficult to organize them for meaningful discussion. We address those of significance that we can isolate.

The separately stated argument is as follows: "The session of the Palm Springs church [Community Church] voted to withdraw from the UPCUSA, and the session ceased to function as a judicatory of the UPCUSA at that time. This constituted an abandonment of the work of the UPCUSA in Palm Springs, and the members of the church at Palm Springs were dispersed, and therefore the church property is subject to such disposition as may be directed by the Presbytery of Riverside." To support these conclusions, appellants rely on a paragraph from The Book of Order which provides: "Whenever hereafter *a particular church* is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of *its* members, the abandonment of *its* work, or other cause, such property as it may have, both real and personal, shall be held, used, and applied for such uses, purposes, and

trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of The United Presbyterian Church in the United States of America." (Emphasis added.)

These contentions of appellants are ill-founded. The quoted provision plainly provides that the property of a local church shall be held upon such trusts as the presbytery may direct when the local church (session) has been formally dissolved by the presbytery or when the local church has become extinct because of the dispersal of its members or the abandonment of its work. "[I]ts work" refers to the work of the local church, not the work of UPCUSA. As previously pointed out, the articles of incorporation of Community Church have provided since it was first incorporated that its purpose is the establishment of one or more places of worship and the dissemination of the Christian doctrine. Community Church still maintains a place of worship and is still engaged in the dissemination of Christian doctrine notwithstanding its withdrawal from the Presbyterian denomination. Its work has not been abandoned, and its members have not been dispersed.

In respect to what we have characterized as the implied-in-fact trust contention, appellants' principle argument is that UPCUSA has long adhered "to the principle that title to all property of the local church is held in trust for the benefit of the whole denomination," and that when Community Church affiliated with UPCUSA in 1917, it and its members agreed to be bound by the system of government and the laws and practices of UPCUSA. (See, e.g., *Watson v. Jones, supra,* 80 U.S. at pp. 726-727 [20 L.Ed. at p. 676]; *Committee of Missions v. Pacific Synod, supra,* 157 Cal. at p. 122.) Thus it is

asserted that by implied agreement Community Church holds title and possession of its property subject to a trust for the benefit of the general church.

However, normally, the question whether parties in their dealings have created a trust is one of fact to be determined largely by ascertaining the intent of the parties (*Petherbridge v. Prudential Sav. & Loan Assn.,* 79 Cal.App.3d 509, 561—517; *Abrams v. Crocker-Citizens Nat. Bank,* 41 Cal. App.3d 55, 59-61; cf. *Rosicrucian Fellow v. Rosicrucian Etc. Ch., supra,* 39 Cal.2d at pp. 133-138) measured by an objective standard (See *Petherbridge v. Prudential Sav. & Loan Assn., supra,* 79 Cal.App.3d at p. 516, fn. 2; *McGhee v. Bank of America,* 60 Cal.App.3d 442, 448; Rest.2d Trusts, § 23, com. *a,* p. 66). Where, as here, the trial court's determination of fact is based on conflicting evidence, or at least evidence giving rise to conflicting inferences, the substantial evidence rule applies, and the trial court's determination will not be disturbed on appeal. (*Estate of Bristol,* 23 Cal.2d 221, 223; *Petherbridge v. Prudential Sav. & Loan Assn., supra,* 79 Cal.App.3d at p. 517.)

It is undisputed, of course, that Community Church has title to and possession of all the property in dispute, both real and personal. Community Church first acquired real property in 1918, at which time the grantors gave the property to named grantees in trust for a component of UPCUSA. In 1929 the property was re-deeded to the corporate Presbytery upon condition that should the land and buildings be used other than for religious purposes or should Presbytery "or other Protestant denomination" fail to "support and maintain the said church and the work therein, to a reasonable extent, the property . . . conveyed . . . and the title thereto" would revert to the grantor. In 1935 the

original church property was sold and the proceeds of sale were used to acquire the land now owned and to build structures and add improvements. Provisions within The Book of Order require that in states where the incorporation of religious organizations is permitted, the property of the local church is to be held for the church by such corporation. In 1935 Community Church was not yet incorporated, and title to the newly acquired property was conveyed directly to the corporate Presbytery. After Community Church had been incorporated, at the request of Community Church, Presbytery conveyed the real property to Community Church in fee simple absolute with no restrictions, conditions or reservations relating to any trust. Previously, as required by Presbytery, Community Church's articles of incorporation were amended to add a provision that "upon the liquidation, dissolution or abandonment of said corporation," all property of the corporation would "revert, transfer and inure to the benefit of" UPCUSA.

Provisions in The Book of Order require that a local church must obtain permission from its presbytery before selling, leasing, mortgaging or otherwise encumbering any of its real property. However, unlike some other religious denominations having a hierarchical structure, there is no requirement by UPCUSA that title to local church property be vested in the general church. On the contrary, it is specifically provided that title to and administration of local church properties be vested in the local church trustees or corporation.

While there was evidence that some judicatories of UPCUSA asserted the principle that local church property is held in trust for the general church, there is not now, nor has there ever been a provision in The Book of Order so declaring, and in 1930 when the General

Assembly considered a proposal for the amendment of UPCUSA'S constitution to require that articles of incorporation of a local church declare that its property is held in trust for the general church, the proposal was not adopted.

Manifestly, the foregoing evidence gives rise to conflicting inferences. Even those provisions in The Book of Order that at first blush might be taken to support appellants' position (presbytery's permission required to sell, lease or encumber local church property; property to insure to the benefit of UPCUSA in the event of abandonment or dissolution of the local church) give rise to conflicting inferences, for if the property of a local church were in fact held in trust for the general church, those provisions would appear to be unnecessary. In any event, the controlling findings of the court with respect to the establishment of an implied-in-fact trust,which are not challenged on appeal, are that Community Church had no notice or knowledge that Presbytery or the general church claimed any implied trust interest in the local church properties; that at no time prior to the dispute between Community Church and UPCUSA and its components was any communication ever directed to representatives of Community Church giving notice that the general church claimed ownership of or a trust interest in Community Church properties; and that at no time did Community Church or its representatives make a commitment or agreement in writing or otherwise that title to its properties would be held in trust for the Presbyterian denomination or any division thereof. These findings are determinative of the issue.

Finally, we come to appellants' contention that the judgment quieting title to the disputed property in Community Church deprives the general church of its

property without due process of law. This contention is devoid of merit. The parties to this action, like countless others, are involved in a dispute over title to and the right to possession of specific real and personal property. Authoritative decisions of the United States Supreme Court and the appellate courts of the State of California authorize the trial court to determine the dispute by the application of "neutral principles of law" and the "formal title doctrine" (see fn. 2, and accompanying text, *ante*), that is, by the rules and principles of law applied to all parties to civil litigation involving such a dispute. Utilizing "neutral principles," the court has resolved the dispute adversely to plaintiffs, and, in a sense, plaintiffs have been "deprived" of property claimed by them. However, the "deprivation" of property plaintiffs have suffered is no different than that of any other unsuccessful litigant involved in such a dispute, and that "deprivation" is not without due process of law but on the contrary, is the result of due process of law.

The judgment is affirmed.
CERTIFIED FOR PUBLICATION.

KAUFMAN

J.

We concur:

TAMURA

Acting P.J.

McDANIEL

J.

I, ROBERT L. FORD, Clerk of the Court of Appeal, Fourth Appellate District, State of California, do hereby Certify that the preceding and annexed is a true and correct copy of OPINION as shown by the records of my office.
WITNESS my hand and the Seal of the Court this 5th day of July A.D. 1979.
ROBERT L. FORD, Clerk
By D M Johnson Deputy Clerk

Attorney for Defendants and Cross-Complainant

FILED
RIVERSIDE COUNTY
APR 21, 1977
DONALD D. SULLIVAN, Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF RIVERSIDE

PRESBYTERY OF RIVERSIDE ET AL.,
Plaintiffs,
vs.
JAMES H. BLACKSTONE, ET AL.,
Defendants.

NO. INDIO 13680 (MASTER FILE)

NO. INDIO 12302

COMMUNITY CHURCH OF PALM SPRINGS,
Cross-Complainant,
vs.
PRESBYTERY OF RIVERSIDE,
Cross-Defendants.

JUDGMENT AFTER TRIAL BY COURT

ADMINISTRATIVE COMMISSION OF THE COMMUNITY CHURCH OF PALM SPRINGS,
Plaintiffs,
vs.
JAMES H. BLACKSTONE, JR., ET AL.
Defendants

The above actions consolidated for trial came on regularly for trial on January 22, 1976 in Department 8 of the above entitled court sitting in Riverside, California, the Honorable JOHN H. HEWS, Judge Presiding, without a jury. The trial continued in session through Thursday, January 29, 1976. Plaintiffs and Cross-Defendants appeared by JAMES D. WARD of the firm of THOMPSON & COLEGATE; Defendants and Cross-Complainants appeared by JAMES M. SCHLECHT of the firm of SCHLECHT & McCULLOUGH.

A jury trial having been waived, the court having heard the testimony and considered the evidence, and the court having already filed its Findings of Fact and Conclusions of Law, the court hereby orders the following judgment:

1.) Defendant and Cross-Complainant COMMUNITY CHURCH OF PALM SPRINGS, A California Non-Profit Corporation, was at the time of commencement of the above entitled actions, and now is, the vested legal owner in fee simple absolute of all real and personal property described in Exhibit "A" attached hereto and incorporated herein by reference, including any monies, securities, bequests and gifts of property which may be in the possession or which have been made to said COMMUNITY CHURCH OF PALM SPRINGS since this litigation commenced.

2.) It is further adjudged that the PRESBYTERY OF RIVERSIDE, a Non-Profit Corporation, PRESBYTERRY OF RIVERSIDE, an Unincorporated Religious Association, and the ADMINISTRATIVE COMMISSION OF THE COMMUNITY CHURCH OF PALM SPRINGS (PRESBYTERIAN) have no right, title, estate, lien, claim to or interest in, of any nature, in

any of the properties referred to in Exhibit "A", or any part thereof.

3.) It is further adjudged that COMMUNITY CHURCH OF PALM SPRINGS, A California Non-Profit Corporation, and all of its assets are properly under the control of its membership acting by and through its duly elected Board of Trustees.

4.) It is further ordered that Defendant and Cross-Complainant COMMUNITY CHURCH OF PALM SPRINGS recover its costs from the PRESBYTERY OF RIVERSIDE in the amount of $ $121.50 .

Dated: April 21, 1977.

_____

JUDGE OF THE SUPERIOR COURT

JUDGMENT ENTERED ON _____,

1977, IN JUDGMENT BOOK _____,

VOLUME _____, PAGE _____.

DONALD D. SULLIVAN, CLERK

By _____

Entered on date filed
Judgment Book 246 Page 017

A. REAL PROPERTY

PARCEL 1:

Lots 16, 17, 18 and 19 in Block 16 of Palm Springs, as shown by Map on file in Book 9, page 432 of Maps in the office of the County Recorder, San Diego County; together with the Easterly 8 feet of Orange Avenue, as shown on said Map, adjacent to Lots 18 and 19 thereof, as vacated by Board of Supervisors of Riverside County, California, by Order recorded March 27, 1926 in Book 665, page 532 of Deeds.

PARCEL 2:

Lot 9 in Block 7 and the Southerly rectangular 25 feet of Lot 8 in Block 7 of Palm Springs, as shown by Map on file in Book 9, page 432 of Maps, Records of San Diego County, California.

PARCEL 3:

The North 50 feet of Lots 13, 14, and 15 and all of Lots 16, 17, 18, 19, 20 and 21, Block 7, Palm Springs as per Map recorded in Book 9, page 432 of Maps, Records of San Diego County, California.

PARCEL 4:

PARCEL A:

The South 35 feet of Lot Seven (7) and the North 25 feet of Lot Eight (8), in Block Seven (7) of Palm Springs, San Diego County Records, as per Map recorded in Book 9, page 432 of Maps, in the office of the County Recorder of San Diego County, California.

PARCEL B:

The Westerly eight feet of Orange Street as vacated by

Order of the Board of Supervisors of Riverside County recorded March 27, 1926 in Book 665, page 532 of Deeds lying South of the Easterly prolongation of the North line of the South 35 feet of Lot 7 and North of the Easterly prolongation of the South line of the North 25 feet of Lot 8.

PARCEL 5:

PARCEL A:

Lot 6 and the Northerly 15 feet of Lot 7 in Block 7 of Palm Springs, as shown by Map on file in Book 9, page 432 of Maps, Records of San Diego County, California.

PARCEL B:

The Westerly 8 feet of Orange Street, as vacated by Order of the Board of Supervisors of Riverside County recorded March 27, 1926 in Book 665, page 532 of Deeds, Records of Riverside County, California, lying South of the Easterly prolonggation of the Northerly line of Lot 6 in Block 7 of Palm Springs, as shown by Map on file in Book 9, page 432 of Maps, Records of San Diego County, California; and lying North of the Easterly prolongation of the Southerly line of the Northerly 15 feet of Lot 7 in Block 7 of said Palm Springs.

PARCEL 6:

Lots 10, 11 and 12 in Block 7 in Palm Springs, as shown by map on file in Book 9, page 432 of maps in Records of San Diego County, California.

PARCEL 7:

The South 100 feet of Lots 13, 14 and 15, Block 7, Palm Springs, as per map recorded in Book 9, Page

432 of Maps, Records of San Diego County, California.

B. PERSONAL PROPERTY

All furniture, furnishings, books of worship, hymnals, account books, bank accounts, money and other personal property of every kind, nature and description located upon, or within the improvements located upon the real property described above whether such personal property was in or upon said real property on May 28, 1968 or has been added to, acquired or created subsequent to such date including all money, securities, bequests, gifts or accounts deposited with any and all financial institutions vested in or under the control of the COMMUNITY CHURCH and whether in being on May 28, 1968 or on the date of entry of judgment herein.

EACH DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED IS CERTIFIED TO BE A FULL, TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE AND OF RECORD IN MY OFFICE.

Dated: July 27, 1979

DONALD M. SULLIVAN, COUNTY CLERK
Clerk of the Superior Court
Clerk of the Board of Supervisors
County of Riverside, California

By _____, Deputy

MINUTES
OF THE
GENERAL ASSEMBLY
OF
THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA

PART I
Journal
One Hundred and Eightieth General Assembly
Minneapolis, Minnesota
May 16-22, 1968

SEVENTH SERIES
VOLUME II
1968

Part I Journal
Part II Annual Reports
Part III Statistics

OFFICE OF THE GENERAL ASSEMBLY
Witherspoon Building,
Philadelphia, Pennsylvania 19107
August, 1968

The preliminary judgment of the Permanent Judicial Commission in Administrative Case No. 2, entitled James H. Blackstone, Jr., Complainant, vs. The Synod of Southern California, Respondent, was read by Donald S. Fuerth, Esquire, and was made the final judgment of the General Assembly. Commissioners from the Synod of Southern California did not participate in the voting. The final judgment is as follows:

James H. Blackstone, Jr. Complainant, vs. THE SYNOD OF SOUTHERN CALIFORNIA, Respondent.	ADMINISTRATIVE CASE NO. 2

The Rev. James H. Blackstone, Jr., Pastor of the Community Church of Palm Springs (Presbyterian), of Palm Springs, California, hereinafter referred to as "Palm Springs Church," has complained against the action of the Synod of Southern California, hereinafter referred to as "Synod," in sustaining the Presbytery of Riverside, hereinafter referred to as "Presbytery," denying the request of Palm Springs Church to negotiate for withdrawal from The United Presbyterian Church in the United States of America and for leave to retain its local church property.

Timely notice of complaint to the General Assembly was given to Synod and the complaint was properly filed with the General Assembly. It is the finding of the Permanent Judicial Commission of the General Assembly that the matter is properly before it as an administrative case (Book of Discipline, Chapter XII. Section 9 and Section 10), that Complainant has a standing to complain (Book of Discipline, Chapter XII. Section 8), and that since a question of the interpretation of the Constitution is involved, it is a proper case for consideration by the Permanent Judicial Commission of the General Assembly (Form of Government, Chapter XIV, Section 9).

The essential facts are as follows:

On January 11, 1967, the congregation of Palm Springs Church adopted a resolution asserting its objection to the proposed Confession of 1967, and resolving to retain the Westminster Confession of Faith, including the retention of subscription questions then in use rather than the new questions to be presented to the General Assembly in May, 1967. Complainant mailed a letter to members of Palm Springs Church advising them

of a meeting of the congregation to be held on June 25, 1967, for the purpose of considering the recommendations of a special committee that had been appointed in April to study the future course of Palm Springs Church. Attached to the letter was a "Report on the Issues that Face Our Church" prepared by Complainant. This report discussed the background of Palm Springs Church, pointing out that in 1917 the small group of original members elected to become a congregation under the Constitution of the Presbyterian Church in the United States of America, that for many years it was the only Protestant Church in the community, and that the ministry had not been so denominationally oriented that it would exclude the fellowship of people of other denominations. The report stated that there had been a growing divergence for many years within the Presbyterian denomination reflecting basic differences in theology between conservatives and liberals and that the "Confession of 1967" was an effort to call a divided church to unity in its mission. He referred to the Confession as a successful compromise on the part of the liberals, but said that it was disappointing to others in the church in that it failed to maintain the historic position of the denomination. The report described three issues which Complainant considered vital:

"First, the lack of a true Confessional standard for our Church as the system of doctrine which we believe to be taught in the Scriptures; second, the changed attitude toward the Holy Scriptures in the Ordination Vows as the official view of the denomination; and third, the mandate for social action, which the liberals believe to be the import of 'The Confession of 1967'."

He also referred to certain trends which he considered apparent in the action of the General

Assembly and with which he took issue, namely, the increased social action replacing the strong program of evangelism, the trend toward ecumenism and the confusion in the Church's Christian Education program.

At the meeting of the congregation on June 25th the following recommendation made by the special committee was submitted to the congregation for a vote:

"We recommend that our church reaffirm its doctrinal position contained in the resolution adopted unanimously by our congregation at the annual meeting 11 January, 1967, and that this commitee be authorized to negotiate with the Presbytery of Riverside to explore the means of working out an amicable arrangement, by which our church can withdraw from the United Presbyterian Church and operate independently as The Community Church of Palm Springs, keeping our church property and enabling us to seek fellowship or association with churches of like doctrinal standards."

According to a letter by Complainant addressed to the congregation of Palm Springs Church dated June 28, 1967, the vote of the congregation approving the recommendation was 212 to 3. (The total membership of this church reported as of December 31, 1967, was 999.) At the argument before this Commission both sides informed the Permanent Judicial Commission that, at a later date, the vote in favor of withdrawal was 296 to 42.

Complainant notified the Stated Clerk of Presbytery of the congregational action and asked if the General Council or a committee of Presbytery would meet with Palm Springs Church committee to start conversations. On July 7th a meeting of the General Council was called for the purpose of considering the proposal from Palm Springs Church. The meeting ran for approximately five

hours, two hours of which were devoted to presentations by Palm Springs Church committee members and discussions by members of the General Council with those committee members. At the close of the meeting the General Council voted to recommend to Presbytery "that the request submitted by the Palm Springs Community Presbyterian Church be denied, in order that the witness of The United Presbyterian Church in the United States of America might be maintained in the city of Palm Springs." Two days later the General Council met with the Session of Palm Springs Church to discuss the issues and the recommendation the General Council proposed to make to Presbytery.

Subsequently, on September 6, at its regular meeting, the General Council requested the Stated Clerk to prepare a documented statement in support of, and giving reasons for, the Council's recommendation.

On September 23, Presbytery received the General Council's recommendations and the prepared statement supporting the recommendations entitled "It Is Not Negotiable." This statement discussed the authority of the Constitution and the unity of the Church, the changes in the Constitution, effected through action of the General Assembly in 1967, reviewed the attempts of other churches to withdraw and retain property, referred to precedents in Civil Courts, and concluded:

"In view of all the above, including (1) insufficiency of doctrinal change as grounds on which the request rests, (2) the lack of any inherent right of a congregation to withdraw and retain its property, (3) civil and ecclesiastical precedent in cases that have been heard and settled, (4) Presbytery's lack of authoritative jurisdiction, your Stated Clerk believes that the recommendation of

General Council is correct, and that the request from Palm Springs is not negotiable."

The Stated Clerk moved the adoption of the Council's recommendation and the motion was seconded. Complainant moved a substitute motion that the request of Palm Springs Church be approved as originally presented. The substitute motion was defeated 64 to 5. The original motion adopting Council's recommendation was then approved by a vote of 65 to 3.

Complainant thereupon complained to Synod setting forth the following reasons in support of such complaint:

I.

"The Riverside Presbytery denied the request of the Palm Springs Community Church to negotiate for withdrawal upon the mistaken assumption that it did not have jurisdiction to hear the request, and that the request was 'not negotiable.'

II.

"The Presbytery of Riverside failed to consider the distinctive and unique character of the Palm Springs Community Church.

III.

"The adoption of the Confession of 1967, the removal of the Westminster Confession of Faith and the Catechisms from their position as the doctrinal symbols of the denomination and the placing of that confession in a book of historic confessions of various centuries, and the revision of two ordination vows by the General Assembly of The United Presbyterian Church in the United States of America constitute a breach of the trust relationship by which the Community Church of Palm Springs holds title to its property."

The Judicial Commission for Synod heard the matter and rendered judgment that the action of Presbytery be sustained and the request of Palm Springs Church be not granted. Referring to the three reasons of complaint, that Commission stated:

"It is the judgment of the Judicial Commission that Reason No. 1, of the Complaint is not sustained because the Presbytery of Riverside did receive and deny the request of the Palm Springs Community Church to withdraw from The United Presbyterian Church in the United States of America and to retain its prperty.

"Reason No. 2, of the Complaint is not sustained because the Presbytery of Riverside did consider the distinctive and unique character of the Palm Springs Community Church when it denied the request 'that the witness of The United Presbyterian Church in the United States of America might be maintained in Palm Springs.'

"Reason No. 3, of the Complaint is not sustained since changes in the doctrinal symbols of the church do not affect the relationship of a particular church in the Presbyterian system. 'A particular church consists of a number of professing Christians, with their children, voluntarily associated together for divine worship and godly living, agreeably to the Holy Scriptures, and submitting to a certain form of government.' (Form of Government, Chapter IV, Section 1. Also see chapter IV, Section 2(2))."

In the complaint to General Assembly, the Complainant asserts that Synod did not consider Reason No. 2 raised before Synod. This assertion is inaccurate and we concur in Synod's judgment in this respect. Complainant's reason for complaint to General Assembly may be summarized as follows:

(1) Synod found that Presbytery had decided the case on its merits, whereas, the records of the decision of Presbytery show clearly that the decision was influenced by the assumption that it did not have jurisdiction and that the matter of such withdrawal was "not negotiable," and (2) Synod gave no consideration to the basic question which has brought the congregation of Palm Springs Church to its announced position to withdraw from the denomination; namely, that whether or not the General Assembly agrees with the views of the congregation of Palm Springs Church, the important fact is that the congregation believes that the changes in the Constitution brought about by the action of the General Assembly in 1967, constitute a radical departure from the basic principles of the Constitution of The United Presbyterian Church in the United States of America.

Reason No. 1 is not sustained. We are satisfied that Presbytery did consider the request of Palm Springs Church on its merits. The record clearly shows that the views of Complainant and members of his church were before Presbytery when official action was taken on both the substitute and original motions. Two hours were devoted by General Council to hearing the presentation and discussion of the matter by Complainant and members of the Palm Springs Church. Another two hours were spent by General Council in discussion with the Session ten weeks before the meeting of Presbytery.

Prior to the meeting of Presbytery, Complainant sent a circular letter to the ministers and elders of Presbytery enclosing a memorandum which set forth at length a number of factors which he felt should be taken into consideration in passing on the merits of the case. On the floor of Presbytery, Dr. Blackstone spoke at length in

support of his substitute motion, referred to the circular letter and attempted to answer arguments presented in favor of adopting the General Council's recommendation.

Complainant maintains that the decision was influenced by the assumption that Presbytery did not have jurisdiction to consider the request on its merits because of the document submitted by the Stated Clerk to support the General Council's recommendation. The language quoted in the Complaint reads: "It is your Stated Clerk's opinion that Presbytery does not have jurisdiction over the question presented by the church in Palm Springs. That jurisdiction remains with General Assembly." This, taken out of context, could lead one to the conclusion that Presbytery had decided the case on jurisdictional ground rather than on its merits. A complete reading of the document, however, leaves no doubt that the merits of the request were very much in question. It should be noted that immediately after this sentence the following appears:

"In view of precedent already established, it would appear that withdrawal and retention of property is not a right, but a privilege rarely granted, one that General Assembly would not even consider except on appeal, *without a strong recommendation from Presbytery that would be supported on persuasive grounds.*

"It is your Stated Clerk's further opinion *that the grounds of doctrine change as proposed by the church in Palm Springs are not sufficient,* in view of the provisions for change clearly set forth in the Constitution and the fact that General Assembly approved the change." (Italics supplied)

There is nothing in the Stated Clerk's statement which would indicate that Presbytery lacked the

authority to *recommend* approval of Palm Springs' request to General Assembly if it reached the decision that the request was a meritorious one. Presbytery did not have final authority to approve the Palm Springs Church's request to withdraw from the denomination and take the church property with it. As stated in the *Minutes* of the General Assembly, 1964, on page 271, in answer to eight separate Overtures on the subject:

"The United Presbyterian Church in the United States of America is one Church with synods, presbyteries, and congregations as parts thereof. We reaffirm the position that ownership of all property in The United Presbyterian Church in the United States of America is shared by all of its members, despite the multiplicity of corporations among its parts. Title cannot be transferred without adequate financial compensation except by action of the General Assembly as the judicatory which represents the whole Church."

Complainant recognized this limitation of Presbytery's authority in his memorandum to the members of the Presbytery when he stated:

"According to the interpretation given by the Stated Clerk of the General Assembly regarding churches in our position at the present time, we believe that the Presbytery has the right and the responsibility to consider all the factors of the local situation of the individual church in forming its judgment, and if there is found sufficient reason, then to recommend to the General Assembly approval of the request. In our case, we feel that there are a number of factors that should be considered."

It is our opinion that Presbytery did consider the factors enumerated by Complainant as well as the fact that this was the only United Presbyterian Church in the United States of America in Palm Springs which had

given witness of the denomination for the past 50 years and reached the conclusion that on the merits the request of Palm Springs Church should be denied "in order that the witness of The United Presbyterian Church in the United States of America might be maintained in Palm Springs."

Complainant's second basic contention is that, regardless of how General Assembly views the matter, the belief of the members of the Palm Springs congregation that the constitutional changes in 1967 radically departed from the basic principles of the Constitution of The United Presbyterian Church in the United States of America is itself a sufficient basis for withdrawal of Palm Springs Church with its property. The argument is, in substance, (1) that Palm Springs Church congregation had no direct vote in the decision to make these changes, (2) that such changes were never contemplated "by those who made these provisions for amending the Constitution," and (3) that such changes constitute a breach of the trust relationship between the local church as holder of the title to the property and The United Presbyterian Church in the United States of America as beneficiary of the trust.

The argument misconceives both the constitutional structure of the Church and the nature of the trust relationship between a particular church and the denomination.

The constitutional provisions for the government of the denomination and of any particular church, as well as the provisions for future amendment of its governmental structure and its doctrinal statements, are accepted by a local church when it decides to become a part of the denomination (as Palm Springs Church did in 1917). It has been settled, by decisions of the civil courts, as well as

by frequent actions of the General Assembly, that a particular church holds legal title to its property as trustee for the benefit of the entire denomination. *Watson v. Jones*, 80 U.S. 679 (1871); see also *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94 (1952); *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960); and *Digest*, p. A948 ff.

"Therefore, when the property held by the church is that purchased or conveyed for the general use of the religious congregation, not devoted forever, by the instrument which conveyed it, nor by any specific declaration of its owner, to the support of any special religious doctrines, or any peculiar form of worship, it is and remains the property of the general church which exercises such general and ultimate power of control. It does not belong to the particular congregation which uses it, much less to the individual members of such a congregation. It does not belong to the presbytery or the synod, nor, in a strict sense, to the General Assembly. It belongs to the Church, which is composed of its entire membership; . . . and the Church as a whole, acting through its supreme governing bodies, exercises the ultimate rights of ownership and control over all its properties." *Digest*, p. A949, 1937, p. 67 (quoted from *Barkley v. Hayes*, 208 Fed. 319 (1913), affirmed on appeal under the case names of *Duvall v. Synod of Kansas*, 222 Fed. 669 (C.A.8, 1915), and *Shepard v. Barkley*, 247 U.S. 1 (1918).

One of the obligations of this trust relationship is that the trustee (namely, the local church) must use the property for the benefit of the denomination—that is, to serve the interests of the denomination by enhancing the witness *of the denomination* in that particular locality. The local church, as trustee, has no authority to act

contrary to the purposes of the denomination as determined by the denomination as a whole. Presbyteries are given the authority and responsibility to supervise particular congregations to this end by such action as may be appropriate. (Form of Government, Chapter XII, Section 7.)

Furthermore, it is neither legally nor factually accurate to assume (as Complainant apparently does) that the property in question was given by people who intended to limit the use of their property forever to any particular theological emphasis. The property held by Palm Springs Church, like that of most congregations, represents the accumulated stewardship over the years of countless individuals who worshipped there for a time, whether former residents, current residents, or transients. They did not condition their gifts on any specific uses; they simply gave to the Church as part of The United Presbyterian Church in the United States of America. The present congregation holds no proxy from former members and past donors; nor, under Presbyterian government, can any individual be considered to have a severable equity in any property of the church. Rather, it all belongs to the total church.

Just as no individual member who decides to withdraw is entitled to take a part of the church property with him, so also the congregation as a whole must respect the fact that the property belongs to and is held for the use of the whole denomination.

Complainant does not deny that the proper procedures for amending the Constitution were followed in the changes made in 1967. The reference to the lack of a direct vote by the members of the congregation is cited. not as an irregularity, but in explanation of their frustration. Presumably, they would feel the same way if

the identical Constitutional changes had been made by direct vote of all church members rather than by vote of their representatives in the Presbyteries and the General Assembly. Such frustration is inevitable in all organizations because, whatever the decision-making process, there is almost always a minority which preferred something more or less or different.

The complaint really goes to the *content* of the changes, particularly as they relate to the total confessional statement of the church. But the Constitution of the Church does not contain (nor did it in 1917, or at any other time) any limitation on the content of amendments. That is left to the particular General Assembly which recommends an amendment, to the Presbyteries (two-thirds of which must approve), and to the succeeding General Assembly which must thereafter enact the amendment before it can become effective. Since every church is represented in the presbyteries, and the commissioners to each General Assembly are all selected each year by the Presbyteries they represent, the decisions reflect mature deliberations by representatives chosen in a democratic manner which assures expression to all voices in the Church.

The argument of complainant that there is some inherent, unwritten, limitation on the content of amendments is analogous to that rejected by the United States Supreme Court in *State of Rhode Island v. Palmer*, 253 U.S. 350, 386 (1920). It was contended there that such an inherent limitation invalidated the 18th Amendment. The Court brushed it aside with the succinct statement that "The prohibition of the manufacture, sale, transportation, importation and exportation of intoxicating liquors for beverage purposes, as embodied in the Eighteenth Amendment, is within the power to amend reserved by Article 5 of the Constitution."

Similarly, in *Hawke v. Smith*, 253 U.S. 221, 226 (1920), after pointing out that by adopting the Constitution the states had surrendered to the general government powers specifically conferred on Congress, the Supreme Court said: "The framers of the Constitution realized that it might in the progress of time and the development of new conditions require changes, and they intended to provide an orderly manner in which these could be accomplished; to that end they adopted the fifth article."

In the government of the United Presbyterian Church, no less than in the government of the United States, the limitations on change relate to the procedural rules for amendment, not to the subject matter.

Accordingly, the second reason for complaint is not sustained.

As previously stated, the property of a local church is held in trust for the entire denomination and may be withdrawn only with the consent of the denomination, acting through its General Assembly. Whether the General Assembly would give such consent in a particular case without the affirmative recommendation of the Presbytery would be up to the General Assembly. The present complaint involves only the judicial question of whether the local judicatories acted properly within their respective areas of jurisdiction. It does not involve the question of whether the General Assembly, in the exercise of its ultimate authority, should or should not permit Palm Springs Church to withdraw. If Palm Springs Church wants to submit that question to General Assembly, it may properly do so by a petition, addressed to that end in accordance with the rules of General Assembly. While matters of broad concern should come before the General Assembly from presbyteries and

synods, there is ample precedent for specific proposals to be presented by petition of individuals or particular churches. See *Petition of members of First United Presbyterian Church of Indianapolis*, 1941, p. 354, U. *Digest*, p. A552.

"The right of petition is inviolable in the Church as in the State, and whenever private interests are involved, a memorial sent to this body [General Assembly] ought to be received." *Digest*, p. A550, 1928, p. 152; see also *Digest*, p. A548-9, 1928, p. 79.

Accordingly, this decision does not preclude a petition addressed to General Assembly requesting permission for the Palm Springs Church to withdraw, should the congregation choose to follow that course.

It is the preliminary judgment of the Permanent Judicial Commission of the General Assembly that the complaint before the General Assembly against the Synod of Southern California be not sustained.

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1979
No. 79-558

PRESBYTERY OF RIVERSIDE, THE PALM SPRINGS ADMINISTRATIVE COMMISSION FOR THE PRESBYTERY OF RIVERSIDE,

Petitioners,

vs.

COMMUNITY CHURCH OF PALM SPRINGS,

Respondent.

Respondent's Brief in Opposition to the Petition for Writ of Certiorari, to the Court of Appeal of the State of California, Fourth Appellate District, Division Two.

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IN THE

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PRESBYTERY OF RIVERSIDE, THE PALM SPRINGS ADMINISTRATIVE COMMISSION FOR THE PRESBYTERY OF RIVERSIDE,

Petitioners,

vs.

COMMUNITY CHURCH OF PALM SPRINGS,

Respondent.

Respondent's Brief in Opposition to the Petition for Writ of Certiorari, to the Court of Appeal of the State of California, Fourth Appellate District, Division Two.

The COMMUNITY CHURCH OF PALM SPRINGS, a California corporation, the Respondent herein, submits the following Brief in Opposition to the Petition for Writ of Certiorari, to the Court of Appeal of the State of California, Fourth Appellate District, Division Two, heretofore filed by the Presbytery of Riverside and Palm Springs Administrative Commission for the Presbytery of Riverside.

Statement of Facts.

The Respondent Community Church of Palm Springs hereby incorporates by reference the Statement of the Case and the Statement of Facts contained in the opinion of the California Court of Appeal, District

Four, Division Two, found in the Petition for Writ of Certiorari filed herein in Appendix A thereto, at pages A2 to A30, inclusive.

Summary of Argument.

In the Petition for Writ of Certiorari filed herein, the Petitioners allege two grounds for this Court's issuance of the writ. These are as follows:

I

The Decision Below is Inconsistent With the First Amendment Principles as Interpreted by this Court in *Jones v. Wolf*.

II

The Facts of this Case Illustrate How the Application of Neutral Principles of Law Can Result in Violations of the First Amendment and This Court should Re-examine *Jones v. Wolf* in the Light of These Facts.

The argument of Respondent Community Church of Palm Springs, will be divided into three sections as follows:

I

The Decision of the Court of Appeal Herein Is Consistent With the Interpretation of the First Amendment Made by This Court in the Case of Jones vs. Wolf.

II

The Application of Neutral Principles of Law to the Facts of This Case Is Consistent With the Principles of the First Amendment. The Application of the First Amendment Principles by This Court in Jones vs. Wolf Is Correct, and Need Not Be Reviewed.

III

The Trial Court Found That Petitioners Are Estopped to Assert Any Claim to Respondent's Assets. The Judgment of the Trial Court Herein May Therefore Be Affirmed Upon an Independent State Ground.

ARGUMENT.

I

The Decision of the Court of Appeal Herein Is Consistent With the Interpretation of the First Amendment Made by This Court in the Case of Jones vs. Wolf.

The initial ground asserted by the Petitioners herein for the issuance by this Court of its Writ of Certiorari is that the opinion of the Court of Appeal below is inconsistent with the interpretation of the First Amendment to the Constitution recently made by this Court in the matter of *Jones v. Wolf*, ... U.S. ....., 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979). The opinion of this Court in *Jones v. Wolf* states that the Constitution of the Presbyterian Church in the United States, the general church there involved, does not contain any language of trust over the assets of local church corporations in favor of the general church. Petitioners outline the organizational structure of the United Presbyterian Church in the United States of America (UPCUSA) (which is substantially similar, if not identical, to that of the Presbyterian Church in the United States) and cite certain provisions of the Book of Order of the UPCUSA which, Petitioners argue, establish that the assets of local church corporations affiliated with the UPCUSA are held in trust for the general church. Petitioner's initial argument appears to reduce itself to the assertion that, as a matter of law, the local church corporations affiliated with the UPCUSA hold their assets in trust for the general church, by virtue of the provisions of the Book of Order of the UPCUSA, and that the civil courts are obligated to so determine.

Admixed with the Petitioners' initial argument (and with the Petitioners' second assertion in their petition) is the implied argument that the dispute between Petitioners and Respondent is a "religious" or "ecclesiastical" controversy, and not a property rights question. Before addressing the Petitioners' first expressed contention, the Respondent wishes to respond to this argument.

The opinion of the Court of Appeal correctly notes that the issues the trial court was called upon to determine in this matter were purely property disputes. The Petitioners' complaint sought recovery of and Respondent's ejectment from possession of certain real and personal property, title to which is vested in Respondent; sought to have Petitioners' title to these assets quieted; and sought monetary damages for Respondent's use of these properties since 1968. Respondent's cross-complaints sought to have its title to these assets quieted (See Petition for Writ of Certiorari, Appendix A, p. A31). Petitioners did not assert that they have been prevented from establishing a Presbyterian congregation at Palm Springs, California, or providing Presbyterian religious services to members of Respondent's congregation, or others, who wish to attend such services. Respondent does not question the right of Petitioner Presbytery to suspend Respondent as the Palm Springs Session of the UPCUSA and to establish another Session. The Respondent's right to withdraw from the UPCUSA is not in question. See Petition for Writ of Certiorari, Appendix A, pp. A17-A18. Thus, Respondent submits that Petitioners' attempts to characterize the dispute herein as "religious" or "ecclesiastical" are incorrect, and their reliance on cases such as *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976);

Kedroff v. St. Nicholas Cathedral, 344 U.S. 94, 73 S.Ct. 143, 97 L.Ed. 120 (1952) and *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190, 80 S.Ct. 1037, 4 L.Ed.2d 1140 (1960), which involved "religious" or "ecclesiastical" disputes, is misplaced.

Returning to the substance of Petitioners' initial contention, this Court has repeatedly held that the civil courts have the authority to resolve disputes involving the ownership of church property. *Jones v. Wolf, supra*, ... U.S. ....., 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979); *Maryland, etc. Churches of God v. Church of God at Sharpsburg*, 396 U.S. 367, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970); *Presbyterian Church v. Hull Church*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658 (1969). See also *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976).

In the instant case, the Petitioners have based their claim to title and possession of Respondent's real and personal property on the theory that Respondent holds this property in trust for Petitioners' benefit. This Court has repeatedly held that the several states may apply "neutral" principles of law to the resolution of claims of this type. See *Jones v. Wolf*, ... U.S. ....., 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979); *Maryland, etc. Churches of God v. Church of God at Sharpsburg*, 396 U.S. 367, 90 S.Ct. 499, 24 L.Ed. 582 (1970); *Presbyterian Church v. Hull Church*, 393 U.S. 440, 89 S.Ct. 601, 21 L.Ed.2d 658. See also, *Stone v. Stone*, 460 F.2d 64 (1970), cert. den. 409 U.S. 1000, 93 S.Ct. 315, 34 L.Ed.2d 261, rehear. den. 409 U.S. 1118, 93 S.Ct. 896, 34 L.Ed.2d 703. The judgment of the trial court and the opinion of the Court of Appeal are based on the application of these principles.

As the opinion of the Court of Appeal herein correctly notes, in California, the question whether parties in their dealing have created a trust is one of fact, to be determined largely by ascertaining the intent of the parties (*Petherbridge v. Prudential Savings and Loan Association*, 79 Cal.App.3d 509, 516-17; *Abrams v. Crocker-Citizens National Bank*, 41 Cal.App.3d 55, 59-61; *cf. Rosicrucian Fellow v. Rosicrucian, etc. Church*, 39 Cal.2d 133-138) measured by an objective standard (*Petherbridge v. Prudential Savings and Loan Association, supra*, 79 Cal.App.3d at p. 516, footnote 2; *McGhee v. Bank of America*, 60 Cal.App.3d 442, 448; Restatement of Trusts 2d, §23, com. a, p. 66). See Petition for Writ of Certiorari, Appendix A, p. A27. As the opinion of the Court of Appeal further notes, where, as here, the trial court's finding of fact is based on conflicting evidence, or upon evidence giving rise to conflicting inferences, the substantial evidence rule applies. *Estate of Bristol*, 23 Cal.2d 221, 223; *Petherbridge v. Prudential Savings and Loan Association, supra*, 79 Cal.App.3d 509, 517. See Petition for Writ of Certiorari, Appendix A, p. A27.

The California substantial evidence rule was stated by the California Supreme Court in *Estate of Bristol*, 23 Cal.2d 221, 223, as follows:

> "The rule as to our province is: 'In reviewing the evidence . . . all conflicts must be resolved in favor of the respondent, and all legitimate and reasonable inferences indulged in to uphold the verdict, if possible. It is an elementary . . . principle of law, that when a verdict is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any *substantial* evidence, contradicted or uncontradicted, which will support the conclusion reached by the jury. When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court.' (Italics added.) (*Crawford v. Southern Pacific Co.* (1935) 3 Cal. 2d 427, 429 [45 P. 2d 183]). The rule quoted is as applicable in reviewing the findings of a judge as it is when considering a jury's verdict."

This Court adheres to the same standard in reviewing the decisions of lower courts (*Dooley v. Pease*, 180 U.S. 126, 21 S.Ct. 329, 45 L.Ed. 457; *Stanley v. Board of Supervisors*, 121 U.S. 535, 7 S.Ct. 1234, 30 L.Ed. 1000.

In this case, the trial court was presented with conflicting evidence on the question of whether the Respondent holds its assets in trust for either the Petitioners or the UPCUSA. In their Petition for Writ of Certiorari herein, the Petitioners base their argument for the existence of a trust upon various provisions of the Book of Order of the UPCUSA, quoted in the Petition. These provisions grant to Petitioner Presbytery limited control over the Respondent's assets so long as Respondent is affiliated with the UPCUSA. However, Petitioners do not question that Respondent is controlled by its membership, and may terminate its affiliation with the UPCUSA. (Indeed, the 181st General Assembly of the UPCUSA acknowledged the efficacy of the Respondent's termination of the affiliation, when it declined to rule on the merits of Respondent's petition to withdraw from the UPCUSA, on the ground that the petition had been filed by an independent body which had renounced the jurisdiction of the

general church.) (See, Petition for Writ of Certiorari, Appendix A, p. A10; see, also, Appendix A to this Brief, page A1.) Further, it is acknowledged that the Book of Order of the UPCUSA does not now and has not ever contained any express provision that local member churches hold their property in trust for the general church. More significantly, all parties agreed that in 1930, when the General Assembly of the UPCUSA considered an amendment to the Book of Order to require that the articles of incorporation of local member churches declare that their property is held in trust for the general church, the amendment was defeated. See Petition for Writ of Certiorari, Appendix A, pages A28-A29. Respondent asserts that in light of the refusal by the General Assembly of the UPCUSA to adopt a provision for the Book of Order establishing an express trust in the assets of local member churches for benefit of the general church, an interpretation of other provisions of that Book to establish a trust, express or implied, would have been impermissible.

Additional facts presented to the trial court support its finding that Respondent did not hold its assets in trust for Petitioner Presbytery or the UPCUSA. Title to these assets was at one time held by the Presbytery. When the Presbytery conveyed title to these assets to Respondent, it did so in absolute terms without reservation. See, Petition for Writ of Certiorari, Appendix A, p. A28. Moreover, the trial court found on the basis of uncontradicted testimony that the Respondent had no notice or knowledge that Petitioner Presbytery or the UPCUSA claimed any trust interest in Respondent's assets, that at no time prior to the dispute between Respondent and the UPCUSA was any

communication directed to Respondent giving notice that the UPCUSA claimed ownership of, or a trust interest in, Respondent's assets and that neither Respondent nor any of its representatives ever made any agreement or commitment, written or otherwise, that Respondent held title to its assets in trust for the UPCUSA or any of its components. From these facts, the trial court was free to infer that, in fact, prior to the eruption of the dispute between Respondent and the UPCUSA, neither Respondent nor Petitioners nor any other component of the general church believed that Respondent held its assets in trust for the UPCUSA, and that no such trust ever existed.

Moreover, as the opinion of the Court of Appeal herein correctly notes, even the provisions of the Book of Order upon which Petitioners place their reliance give rise to conflicting inferences, since if the local church corporations affiliated with the UPCUSA do hold their assets in trust for the general church, the specific grants of authority expressed in the Book of Order would be unnecessary. See Petition for Writ of Certiorari, Appendix A, p. A29. Respondent thus submits that the trial court finding that Respondent does not hold its assets in trust for the Petitioners or the UPCUSA is supported by substantial evidence, and is hence binding in this review.

In the first section of the Petition for Writ of Certiorari, the Petitioners place stress upon provisions of Respondent's Articles of Incorporation as they read during the time that Respondent was affiliated with the UPCUSA. There is no question that Respondent's Articles of Incorporation did reflect its association with the UPCUSA. However, as the trial court noted, no provision of the Articles ever provided that Respond-

ent held its assets in trust for the UPCUSA or any of its components. And, if the constitution of the UPCUSA does not establish such a trust, the acknowledgment of an affiliation with the church in the Articles of Incorporation cannot serve to create a trust relationship. Moreover, it was within Respondent's powers at all times to amend its Articles of Incorporation without the consent of either the UPCUSA or any of its constituent parts. See California Corporations Code §9305, former California Corporations Code §3600, *et seq.*, now California Corporations Code §§900-910.

As an alternative to their assertion that, as a matter of law, the Book of Order of the UPCUSA creates a trust over the assets of the local church corporations affiliated with the general church, Petitioners appear to argue that they are entitled to Respondent's assets under the provisions of Section 62.11 of the Book of Order, which states, in pertinent part, as follows:

> "Whenever hereafter a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have, both real and personal, shall be held, used and applied for such uses, purposes, and trusts as the presbytery may direct, limit and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of The United Presbyterian Church in the United States of America."

The Petitioners' assertion in this regard is that the UPCUSA has determined that the Respondent has been formally dissolved or become extinct, or has abandoned its work within the meaning of the above-quoted section,

that Petitioners are therefore entitled to succeed to Respondent's assets, and that the civil courts are bound by this determination.

As previously discussed, the civil courts are free to interpret the language of the Book of Order of the UPCUSA when that language purports to affect property rights. Further, Petitioners' argument fails to acknowledge that Respondent is a creature of the law of the State of California and may be dissolved and extinguished only in accordance with that law. Respondent is not dependent upon or subject to the UPCUSA or Petitioners for its corporate existence. The trial court determined that as a factual matter, Respondent has not been dissolved or become otherwise extinct. Additionally, the trial court determined that Respondent is pursuing its work at Palm Springs, California, although that work may no longer be the work of UPCUSA. As matters of fact, these findings are uncontested, and are thus binding on appeal. Thus, Petitioners' contention in this regard is without merit.

In summary, the trial court in the present case, like that in the matter of *Jones v. Wolf, supra,* found that neither the actions of either Respondent nor the components of the UPCUSA, nor any provisions of the Book of Order of that church, gave rise to a trust in favor of the general church, in the assets of Respondent corporation, or compel the transfer of Respondent's assets to Petitioners. That finding of fact is supported by substantial evidence, and is therefore binding on appeal. The application of "neutral principles of law", to this finding of fact has not been questioned in this appeal, and is entirely consistent with the opinion of this Court in *Jones v. Wolf, supra.* The Respondent Community Church of Palm Springs

therefore respectfully submits that the first grounds set forth by Petitioners in their Petition for Writ of Certiorari herein is without merit.

II

The Application of Neutral Principles of Law to the Facts of This Case Is Consistent With the Principles of the First Amendment. The Application of the First Amendment Principles by This Court in Jones vs. Wolf Is Correct, and Need Not Be Reviewed.

The second ground asserted by the Petitioners herein for the issuance by this Court of its Writ of Certiorari is that the application of neutral principles of law to the facts of this case contravenes the principles of the First Amendment, even though such application may be consistent with the rules of *Jones v. Wolf*. The thrust of Petitioners' argument in this regard appears to be that the application of neutral principles of law requires a civil court to examine the constitutional structure of an hierarchical church to determine the distribution of property rights among the components thereof, and that the court may interpret the property rights relationships among those components in a different manner than they are interpreted by some of those components.

As previously noted, this Court has repeatedly held that civil courts have the authority to resolve disputes involving the ownership of church property. *Jones v. Wolf, supra,* ..... U.S. ....., 99 S.Ct. 3020, 61 L.Ed. 2d 775 (1979); *Maryland, etc. Churches of God v. Church of God at Sharpsburg, supra,* 396 U.S. 367, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970); *Presbyterian Church v. Hull Church, supra,* 393 U.S. 440, 89 S.Ct.

601, 21 L.Ed.2d 658 (1969). The Court has further held that in determining such disputes, the civil courts are free to adopt any one of several analytical approaches. The civil courts may resolve such disputes through adoption of the approach suggested in *Watson v. Jones,* 13 Wall. 679, 20 L.Ed. 666 (1872) which entails deference to the will of the majority within a church of congregational structure and to the highest ruling authority in a church of hierarchical structure. *Maryland, etc. Churches of God v. Church of God at Sharpsburg, supra,* 396 U.S. 367, 90 S.Ct. 499, 24 L.Ed.2d 582. Alternatively, the civil courts may apply "neutral principles of law" for the resolution of church property rights to disputes. *Jones v. Wolf,* ..... U.S. ....., *supra,* 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979); *Maryland, etc. Churches of God v. Church of God at Sharpsburg, supra.* Finally, the civil courts may be bound by statutes enacted by the various state legislatures for the resolution of such disputes. *Maryland, etc. Churches of God v. Churches of God at Sharpsburg, supra.* All that is required of the civil courts in fashioning and applying their analytical approaches is that they refrain from resolving the disputes based on their interpretation of religious doctrine or practice. *Jones v. Wolf, supra,* ..... U.S. ....., 99 S.Ct. 3020, 61 L.Ed.2d 775 (1979); *Serbian Orthodox Diocese v. Milivojevich, supra,* 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976); *Maryland, etc. Churches of God at Sharpsburg, supra,* 396 U.S. 367, 90 S.Ct. 499, 24 L.Ed.2d 582 (1970).

Petitioners appear to assert in their petition that as a matter of constitutional law, the civil courts must adopt the analytical approach suggested in *Watson v. Jones, supra.* As previously noted, the opinion in

Watson v. Jones suggests that the civil courts first determine whether a church whose property is in dispute is congregational or hierarchical in structure. Where the church is determined to be hierarchical, the civil court should defer to the determination of the dispute made by the highest judicatory of that church. The principal rationale asserted by Petitioners for the adoption of the *Watson v. Jones* approach as a rule of law is that to allow the civil courts to adopt a different standard will require the UPCUSA to take measures to clarify the distribution of property rights among its component parts.

Initially, this Court has repeatedly stated that, consistent with the requirements of the First and Fourteenth Amendments, civil courts may compel religious organizations to structure relationships involving church property so as not to require the civil courts to resolve ecclesiastical questions. *Jones v. Wolf, supra,* ..... U.S. ....., 99 S.Ct. 3020, 61 L.Ed.2d 775, 785; *Presbyterian Church v. Hull Church, supra,* 393 U.S. 440, 449, 89 S.Ct. 601, 21 L.Ed.2d 658. Implicit in these rulings is the concept that the Constitution does not bar civil courts from requiring that religious organizations structure their property rights relationships in the same manner, to be interpreted by the same rules, as non-religious entities. Nor does reason suggest why a different rule should be adopted. Religious organizations in this country are purely voluntary in nature. No one may be compelled to adhere to any particular religious philosophy, nor any religious philosophy at all. Religious organizations within this country are thus composed of ordinary citizens who have chosen to follow a particular set of religious beliefs. It would make no sense to require these people to structure their personal property interests in one manner, but allow, if not indeed require, them to structure the proprietary interests of the religious organizations to which they adhere, in another manner.

Respondent suggests that the present matter illustrates the difficulties which adoption of the *Watson v. Jones* approach could pose to a civil court. Initially, as the General Assembly of the UPCUSA recognized the Respondent's withdrawal from the general church, there is some question whether the rule of *Watson v. Jones* has any application to the present case. *Watson v. Jones* suggested a method for resolving property rights disputes among components of an hierarchical church or among the factions of a congregational church. However, all parties to this litigation concede that Respondent has withdrawn from the UPCUSA; the efficacy of the withdrawal was recognized by the 181st General Assembly of the UPCUSA. Thus, the present litigation does not involve components of an hierarchical church, but rather an hierarchical church on one hand and an independent non-profit corporation on the other. Under these circumstances, it is not clear that the *Watson v. Jones* analysis has any application.

Further, even if the *Watson v. Jones* approach is applicable to this case, it is unclear that the highest judicatory of the UPCUSA has made a ruling on the merits of this case, or, if it has, what that ruling held. As the opinion of the Court of Appeal herein correctly notes, the 180th General Assembly of the UPCUSA did not pass on the merits of the dispute between Petitioners and Respondent. That General Assembly found Respondent's appeal and the actions of the lower judicatories of the church to have been

proper. The judgment of that General Assembly was denominated as preliminary only. Respondent was specifically authorized to petition the 181st General Assembly for withdrawal from the Church, with retention of its property, should it choose to do so. See Petition for Writ of Certiorari, Appendix A, pages A9-A10; pages A52-A53. However, when Respondent asserted its petition to the 181st General Assembly, the petition was rejected, not on its merits, but because it had been filed by an independent body which had renounced the jurisdiction of the UPCUSA. See Petition for Writ of Certiorari, Appendix A, page A10. See, also, Appendix A to this Brief, page A1. It is not unreasonable to suggest that the action of the 181st General Assembly should be interpreted as acquiescence in the Respondent's course of action.

Finally, even assuming that it can be determined that the rule of *Watson v. Jones* has application to the facts of this case and that the action of the 181st General Assembly constitutes a ruling on the merits adverse to Respondent's position, there still remains the question of whether the UPCUSA is an "hierarchical" church within the meaning of *Watson*. Clearly, the UPCUSA is hierarchical for religious and ecclesiastical purposes; any person or group wishing membership in the UPCUSA must abide by the determinations of the ruling bodies of that church. Respondent suggests, however, that the fact that a church may be hierarchical for the religious and ecclesiastical purposes does not necessarily mean that the hierachical bodies have claims upon the assets of the church members. As previously noted, neither a person nor a congregation can be compelled to be a member of the UPCUSA, and members of the general church are always free

to terminate their association with it. The failure of the Book of Order to contain provisions creating express trusts in the assets of member church corporations for benefit of the general church suggests that a local church wishing to withdraw from the general church may do so and retain its assets. Indeed, as suggested above, the fact that in 1930 the General Assembly of the UPCUSA defeated an effort to amend the Book of Order to require the creation of express trusts by local churches for benefit of the general church, would appear to require this interpretation.

Respondent suggests that the above questions illustrate reasons why the civil courts of the several states ought to be free to adopt an analytical approach other than that suggested in *Watson v. Jones* to the resolution of disputes involving church property. Respondent further suggests that it should not constitute a great hardship on the UPCUSA to structure its property rights so that, applying neutral principles of law, a civil court will determine that a local church corporation holds its assets for benefit of the general church. Petitioners suggest that the membership of the church generally acknowledges that local church corporations hold their assets in trust for benefit of the general church. If this is indeed the case, Respondent suggests that the local member churches will be willing to execute written acknowledgments to that effect, or, perhaps, to even convey title to their assets to the hierarchical components of the general church. In the alternative, the General Assembly of the Church may amend the Book of Order to include a provision similar to that contained in the Book of Discipline of the United Methodist Church. See *Jones v. Wolf, supra,* ..... U.S. ....., 99 S.Ct. 3220, 61 L.Ed.2d 775,

783, footnote 2. If, as Respondent suggests, the general membership of the UPCUSA does not acknowledge that local church corporations hold their assets in trust for the benefit of the general church, Petitioners' position in this litigation must be viewed as an effort by the hierarchy of the UPCUSA to impose upon the church membership by judicial *fiat* a property rights arrangement which the membership would not voluntarily adopt. For this Court to accept Petitioners' position under such circumstances and impose their plan of property rights distribution upon the general membership of the UPCUSA would appear to violate the establishment clause of the First Amendment.

But, Petitioners argue, if the several states are free to adopt varying approaches to the resolution of church property disputes, a general hierarchical church of nationwide scope may be faced with the task of complying with the varying sets of criteria in different states, in its efforts to establish its property rights position. Therefore, Petitioners suggest this Court should fashion a federal rule of property law, in the form suggested by *Watson v. Jones,* to be applied across the nation in the resolution of church property disputes. Petitioners castigate the opinion of this Court in *Jones v. Wolf, supra,* for transferring to the several states the power to determine church property disputes, an area of the law uniquely within the jurisdiction of this Court.

Initially, Respondent notes that the necessity of conforming its property rights arrangements to the laws of the several states is a problem faced by any interstate corporation. The UPCUSA is hardly unique in this regard.

Further, Respondent asserts that Petitioners' argument does not suggest why, if a uniform standard for the

resolution of church property disputes ought to be imposed on the states, that standard ought not to be the "neutral principles of law" approach approved in *Jones v. Wolf, supra.* As the property law of the several states is based on English common law, it is reasonable to expect that such a rule would result in a comparatively uniform nationwide approach to the resolution of church property disputes.

However, Respondent is not prepared to concede that it is wrong for this Court to allow the several states to adopt varying approaches to the resolution of church property disputes. Initially, Respondent asserts that the basic jurisdiction for the resolution of property rights disputes, whether or not they involve religious entities, rests with the states. The only interest this Court has in the resolution of such disputes is to assure that the states settle such disputes in accord with the requirements of the First and Fourteenth Amendments. And those amendments on their face provide only what governments cannot do; they do not purport to establish any rule of substantive law relative to church property disputes or to confer on this Court any peculiar jurisdiction to resolve such disputes. Thus, Respondent asserts that the position taken by this Court in *Presbyterian Church v. Hull Church, supra; Maryland, etc. Churches of God v. Church of God at Sharpsburg, supra,* and *Jones v. Wolf, supra,* is correct and ought not to be changed.

Finally, the Petitioners suggest that the application of the rule of *Jones v. Wolf* to the UPCUSA will result in the ability of the majority of each local congregation to ignore or defy the rules promulgated by the church hierarchy. As previously noted, religious affiliations in this country are purely voluntary in na-

ture. Thus, any individual, or group of individuals who disagree with a position taken by a religious organization are always free to withdraw from their affiliation with that organization. If the UPCUSA is concerned with establishing its property interests in the face of the withdrawal of individuals or blocs of members, the opinion of this Court in *Jones v. Wolf, supra,* has spelled out what the general church should do to protect its position. "The primary advantages of the neutral principles approach are that it is completely secular in operation and yet flexible enough to accommodate all forms of religious organizations and policy. The method relies exclusively on objective, well established concepts of trust and property law familiar to lawyers and judges. It thereby promises to free civil courts completely from entanglement in questions of religious doctrine, polity and practice. Furthermore, the neutral principles analysis shares the peculiar genius of private-law systems in general—flexibility in ordering private rights and obligations to reflect the intentions of the parties. Through appropriate reversionary clauses and trust provisions, religious societies can specify what is to happen to church property in the event of a particular contingency, or what religious body will determine the ownership in the event of a schism or doctrinal controversy. In this manner, a religious organization can ensure that a dispute over the ownership of church property will be resolved in accord with the desire of the members." *Jones v. Wolf, supra,* 61 L.Ed.2d at pp. 784-785. Thus, Respondent

suggests that Petitioners fear that the application of neutral principles of law to property disputes among components of the UPCUSA will result in majority rule at the congregational level only if that is the will of the membership of the general church. If the membership of the general church wishes to vest the church hierarchy with control over the assets of local church corporations, it is free to do so, in the language customarily associated with such grants of authority. The civil courts will honor such arrangements. See for example, *Carnes v. Smith,* 236 Ga. 30, 222 S.E.2d 322 (1976), cert. den. 429 U.S. 868, 97 S.Ct. 180, 50 L.Ed.2d 148 (1976).

In summary, Respondent Community Church of Palm Springs submits that both the application of neutral principles of law to the facts of the instant case and the opinion of this Court in *Jones v. Wolf, supra,* are consistent with the principles of the First Amendment, as interpreted by this Court in a series of cases over a period of years. Further, Respondent suggests that Petitioners have failed to assert any persuasive reasons why this Court should depart from the approach to the reconciliation of church property disputes with the principles of the First Amendment, as developed in *Presbyterian Church v. Hull Church, supra,* through *Maryland, etc. Churches of God v. Church of God at Sharpsburg, supra,* and most recently reaffirmed in *Jones v. Wolf, supra.* Respondent therefore submits that the second ground set forth by the Petitioners in their Petition for Writ of Certiorari is without merit.

III

The Trial Court Found That Petitioners Are Estopped to Assert Any Claim to Respondent's Assets. The Judgment of the Trial Court Herein May Therefore Be Affirmed Upon an Independent State Ground.

The trial court in the instant matter concluded that the Petitioners are estopped to assert any claim to the assets of Respondent Community Church [See Appendix A to this Brief, pp. 19-20]. While the opinion of the Court of Appeal herein did not find it necessary to review the trial court's judgment in this regard [See Petition for Writ of Certiorari, Appendix A, p. A4], the trial court's determination in this regard forms an alternate basis for its judgment herein. The legal correctness of the trial court's finding of estoppel is not challenged in the petition herein. This Court follows the principle of confining its review of the judgments of state courts to the federal constitutional questions decided by those courts. *Waters-Pierce Oil Company v. Texas,* 212 U.S. 86, 29 S.Ct. 220, 53 L.Ed. 417; *Walker v. Taylor,* 5 How. (U.S.) 64, 12 L.Ed. 52. Thus, the Court has repreatedly ruled that it will not review judgments of state courts which rest upon adequate and independent state grounds. *Herb v. Pitcairn,* 324 U.S. 117, 65 S.Ct. 459, 89 L.Ed. 789, Supp. Op., 325 U.S. 77, 65 S.Ct. 954, 89 L.Ed. 1483, reh. den. 325 U.S. 893, 65 S.Ct. 1188, 89 L.Ed. 2005; *Holley v. Lawrence,* 317 U.S. 518, 63 S.Ct. 394, 87 L.Ed. 434, reh. den. 318 U.S. 798, 63 S.Ct. 531, 87 L.Ed. 1162; *McGoldrick v. Gulf Oil Corp.,* 309 U.S. 2, 60 S.Ct. 536, 84 L.Ed. 536, reh. den. 309 U.S. 692, 60 S.Ct. 512, 84 L.Ed. 1034; *Kalb v. Feuterstein,* 308 U.S. 433, 60 S.Ct. 343, 84

L.Ed. 370; *Bell Telephone v. Van Dyke,* 296 U.S. 533, 56 S.Ct. 93, 80 L.Ed. 379; *Fox Film Corp. v. Muller,* 296 U.S. 207, 56 S.Ct. 183, 80 L.Ed. 158; *Enterprise Irrigation Dist. v. Farmer's Mutual Canal Co.,* 243 U.S. 157, 37 S.Ct. 318, 61 L.Ed. 644; *Neblett v. Carpenter,* 305 U.S. 297, 59 S.Ct. 170, 83 L.Ed. 182, reh. den. 305 U.S. 675, 59 S.Ct. 335, 83 L.Ed. 437; *Loftus v. Illinois,* 334 U.S. 804, 68 S.Ct. 1212, 92 L.Ed. 1737. The Respondent suggests that this Court should deny the Petition for Writ of Certiorari herein, in conformance with this principle.

Conclusion.

For the reasons set forth above, the Respondent Community Church of Palm Springs, a California corporation, respectfully submits that the Petition for Writ of Certiorari heretofore filed with this Court by the Presbytery of Riverside and the Administrative Commission for the Presbytery of Riverside should be denied.

Respectfully submitted,

JOHN C. SHEVLIN,
A Member of
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Attorneys for Community Church of Palm Springs.

APPENDIX A.

REPORT OF THE STANDING COMMITTEE ON BILLS AND OVERTURES.

Petition 3: From the Community Church of Palm Springs (Independent), 284 So. Cahuilla Road, Palm Springs, California dated April 24, 1969, requesting that a commission be established by the General Assembly to negotiate a property settlement between it and the Presbytery of Riverside.

The Bills and Overtures Committee has examined the petition and papers related to the case. The petition contains the following sentence: "Under the continued threat of administrative discipline of the Pastor and Session by the officers of Presbytery, our church was forced to declare its independence of the jurisdiction of the denomination which was effective June, 1968."

We find that this petition is filed by an independent body which has renounced the jurisdiction of The United Presbyterian Church in the United States of America, therefore it is not filed by a proper petitioner and cannot be considered by this body. See Book of Discipline, Chapter XII, B. 8 [92.08] The Bills and Overtures Committee *recommends* that it not be considered.

Members of the Committee from the Synod of Southern California did not vote on the case and the chairman absented himself from the chair.

This is to certify that this is a true copy of action which was adopted by the 181st General Assembly in Petition 3, taken in San Antonio, Texas, on Tuesday, May 20, 1969.

/s/ William P. Thompson
William P. Thompson, Stated Clerk

Findings of Fact and Conclusions of Law.

Superior Court of the State of California, for the County of Riverside.

Presbytery of Riverside, et al., Plaintiffs, vs. James H. Blackstone, et al., Defendants. Community Church of Palm Springs, Cross-complainant, vs. Presbytery of Riverside, Cross-defendants. Administrative Commission of the Community Church of Palm Springs, Plaintiffs, vs. James H. Blackstone, Jr., et al., Defendants. No. Indio 13680 (Master File), No. Indio 12302.

Filed: April 21, 1977.

The above entitled case came on reularly for trial on January 22, 1976 in Department 8 of the above entitled court sitting in Riverside, California, the Honorable JOHN H. HEWS, Judge Presiding, without a jury. The trial continued in session through Thursday, January 29, 1976. Plaintiffs and Cross-defendants appeared by JAMES D. WARD of the firm of THOMPSON & COLEGATE as their attorneys; Defendants and Cross-complainants appeared by JAMES M. SCHLECHT of the firm of SCHLECHT & McCULLOUGH, as their attorneys.

Said cause having been tried, evidence both oral and documentary having been introduced, the court having reviewed facts stipulated to by the parties herein, said cause having been submitted for decision, and the court having rendered its Notice of Intended Decision on May 25, 1976, the court now makes the following Findings of Fact and Conclusions of Law;

FINDINGS OF FACT:

1. Plaintiff PRESBYTERY OF RIVERSIDE is a California Non-profit Corporation and Plaintiff PRESBYTERY OF RIVERSIDE also operates as an unin-

corporated Religious Association. (Collectively referred to as "PRESBYTERY OF RIVERSIDE").

2. The PRESBYTERY OF RIVERSIDE, an unincorporated association, has direction and control of the corporate Presbytery. Such unincorporated association also has supervisory jurisdiction and control to the extent provided in its Constitution over all the churches of the PRESBYTERIAN CHURCH in the counties of San Bernardino, Riverside and most of Imperial County.

3. Defendant and Cross-complainant, COMMUNITY CHURCH OF PALM SPRINGS, (COMMUNITY CHURCH) is a corporation organized and existing under the Non-profit Corporation laws of the State of California.

4. THE ADMINISTRATIVE COMMISSION OF THE COMMUNITY CHURCH OF PALM SPRINGS (PRESBYTERIAN) of Palm Springs, California, an unincorporated Ecclesiastical Association, although not originally named in the complaint on file herein as INDIO NO. 13680, became a Plaintiff and Cross-defendant pursuant to stipulation of counsel.

5. THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA (herein called the PRESBYTERIAN CHURCH), a Christian denomination, is organized under the general rules, regulations and system of government of the PRESBYTERIAN CHURCH. These rules, regulations and the system of government are set forth in that portion of the PRESBYTERIAN CHURCH Constitution designated "The Book of Order". Under this Constitution, Rules and Ecclesiastical Law, the church government is the Presbyterian form of government with various com-

ponents thereof constituting one united church, connectional in nature, and the units are integral parts of the church and are not independent or congregational. The Presbyterian system consists of an ascending body of Ecclesiastical Tribunals called Judicatories.

Each local church is governed by a body called the Session. The Session consists of the pastor or pastors and the ruling elders elected by the congregation. In turn, the several local churches within specified geographical areas are organized into what are called Presbyteries.

A Presbytery consists of all the ministers in the geographical area and at least one ruling elder from each individual church. Each Presbytery has directed, immediate supervision of all the churches within its area, and by virtue of its jurisdiction has among other powers, the power to organize and dissolve churches, remove pastors from their pulpits, and suspend the powers of a Session. When the powers of a Session are suspended the Presbytery also has the power and authority to elect an Administrative Commission, which by virtue of such election, assumes control over the life of the church. The Session of each individual church being in control of the affairs of the church has jurisdiction and control over the Board of Trustees and the members thereof.

The next higher tribunal or judicatory in the Presbyterian system above the Presbyteries are the Synods which consist of more than one Presbytery, usually including an entire state, and usually consisting of three or more Presbyteries.

The Synod of Southern California is the Ecclesiastical Tribunal or judicatory which includes the PRESBYTERY OF RIVERSIDE and exercises ecclesiastical control over seven Presbyteries in Southern California

and the State of Hawaii. Above all of these, and the highest judicatory in the Presbyterian Church, is the General Assembly, the commissioners of which are elected annually by the various Presbyteries. The General Assembly in the Presbyterian system has combined legislative and judicial functions as well as administrative functions to its various arms and agencies.

6. Legal title to the following described real and personal property is at present vested in the Defendant/cross-complainant COMMUNITY CHURCH:

A. *REAL PROPERTY*

PARCEL 1:

Lots 16, 17 18 and 19 in Block 16 of Palm Springs, as shown by Map on file in Book 9, page 432 of Maps in the office of the County Recorder, San Diego County; together with the Easterly 8 feet of Orange Avenue, as shown on said Map, adjacent to Lots 18 and 19 thereof, as vacated by Board of Supervisors of Riverside County, California, by Order recorded March 27, 1926 in Book 665, page 532 of Deeds.

PARCEL 2:

Lot 9 in Block 7 and the Southerly rectangular 25 feet of Lot 8 in Block 7 of Palm Springs, as shown by Map on file in Book 9, page 432 of Maps, Records of San Diego County, California.

PARCEL 3:

The North 50 feet of Lots 13, 14, and 15 and all of Lots 16, 17, 18, 19, 20 and 21, Block 7, Palm Springs as per Map recorded in Book 9, page 432 of Maps, Records of San Diego County, California.

PARCEL 4:

PARCEL A:

The South 35 feet of Lot Seven (7) and the North 25 feet of Lot Eight (8), in Block Seven (7) of Palm Springs, San Diego County Records, as per Map recorded in Book 9, page 432 of Maps, in the office of the County Recorder of San Diego County, California.

PARCEL B:

The Westerly eight feet of Orange Street as vacated by Order of the Board of Supervisors of Riverside County Recorded March 27, 1926 in Book 665, page 532 of Deeds lying South of the Easterly prolongation of the North line of the South 35 feet of Lot 7 and North of the Easterly prolongation of the South line of the North 25 feet of Lot 8.

PARCEL 5:

PARCEL A:

Lot 6 and the Northerly 15 feet of Lot 7 in Block 7 of Palm Springs, as shown by Map on file in Book 9, page 432 of Maps, Records of San Diego County, California.

PARCEL B:

The Westerly 8 feet of Orange Street, as vacated by Order of the Board of Supervisors of Riverside County Recorded March 27, 1926 in Book 665, page 532 of Deeds, Records of Riverside County, California, lying South of the Easterly prolongation of the Northerly line of Lot 6 in Block 7 of Palm Springs, as shown by Map on file in Book 9, page 432 of Maps, Records of San Diego County, California; and lying North of the Easterly

prolongation of the Southerly line of the Northerly 15 feet of Lot 7 in Block 7 of said Palm Springs.

PARCEL 6:

Lots 10, 11 and 12 in Block 7 in Palm Springs, as shown by Map on file in Book 9, page 432 of Maps, Records of San Diego County, California.

PARCEL 7:

The South 100 feet of Lots 13, 14 and 15, Block 7, Palm Springs, as per Map recorded in Book 9, Page 432 of Maps, Records of San Diego County, California.

B. *PERSONAL PROPERTY:*

All furniture, furnishings, books of worship, hymnals, account books, bank accounts, money and other personal property of every kind, nature and description located upon, or within the improvements located upon the real property described above whether such personal property was in or upon said real property on May 28, 1968 or has been added to, acquired or created subsequent to such date including all money, securities, bequests, gifts or accounts deposited with any and all financial institutions vested in or under the control of the COMMUNITY CHURCH and whether in being on May 28, 1968 or on the date of entry of judgment herein.

7. The defendant COMMUNITY CHURCH OF PALM SPRINGS, a California Non-profit Corporation, was incorporated in 1948 by members of an unincorporated association which had maintained in the City of Palm Springs a church known as the COMMUNITY CHURCH OF PALM SPRINGS for a number of years

prior to 1917. In 1917 the unincorporated association became affiliated with the Presbyterian denomination.

8. The unincorporated association took the name of "PALM SPRINGS PRESBYTERIAN CHURCH" in 1917 when it affiliated with the Presbyterian Church. Thereafter, very early in its development, the association discontinued the use of the name of PRESBYTERIAN and became known as THE COMMUNITY CHURCH OF PALM SPRINGS or COMMUNITY CHURCH OF PALM SPRINGS (Presbyterian). For many years, the COMMUNITY CHURCH was the only protestant church in the community of Palm Springs. From 1917 until 1967 the pastors of the COMMUNITY CHURCH were placed in the pulpit by the Judicatories of The United Presbyterian Church in the United States of America. During this period the Session of the COMMUNITY CHURCH and the pastors regularly participated in the activities of the Presbytery. Members of the Session, upon being admitted to membership in the Session, took an oath of office pledging adherence to the doctrine and discipline of the Presbyterian denomination. The Session from time to time referred to the Presbytery matters regarding real property, including the purchase, sale and mortgaging of same.

9. After 1917 and to the present time, only on a rare occasion did any of the publications and other printed material of the COMMUNITY CHURCH make any reference to affiliation with the PRESBYTERIAN denomination. A substantial majority of the written communication printed and circulated by the COMMUNITY CHURCH described itself as inter-denominational and non-denominational in character, open to the members of all Protestant faiths. The COMMUNITY CHURCH on the occasions of its 35th, 40th and 50th anniversaries published and disseminated materials referring to the history of the church and on each occasion, reference was made to the affiliation of the church with the Presbyterian denomination.

10. The original church property of the COMMUNITY CHURCH was deeded to the church in 1918. The grantors gave the property to the named grantees in trust for the PRESBYTERY OF RIVERSIDE. In 1931 said grantors re-deeded the property to the PRESBYTERY OF RIVERSIDE, now a corporation, upon the conditon that should the land and buildings be used for other than religious purposes or if the PRESBYTERY OF RIVERSIDE or other Protestant denomination did not support and maintain said church and the work therein, said land and buildings would revert to the grantors.

In 1935, the original church property, which had been in the possession of and continuously used by the local unincorporated association for many years, was sold. The sale of the property was authorized by the Session and the Trustees of the COMMUNITY CHURCH. The proceeds of the sale were used to acquire Lot 16, 17, 18 and 19 of Block 16, City of Palm Springs, described in Finding No. 6 above and to construct thereon church improvements. Such proceeds were disbursed through the architect and general contractor under the direction of the local COMMUNITY CHURCH. Title to this property was conveyed directly to the PRESBYTERY OF RIVERSIDE, a corporation. This conveyance was made to the Presbytery on or about June 1, 1935, at which time the COMMUNITY CHURCH had not been incorporated.

11. At the request of the COMMUNITY CHURCH, after said church had been incorporated, Plaintiff PRESBYTERY conveyed said real property to the COMMUNITY CHURCH on or about December 15, 1959. Such conveyance was made in fee simple absolute with no restrictions, conditions or reservations relating to any trust provision, express or implied.

12. At the time of incorporation in 1948, the COMMUNITY CHURCH had the corporate name COMMUNITY CHURCH OF PALM SPRINGS (PRESBYTERIAN) and its Articles of Incorporation cited adherence to the doctrine and discipline of the PRESBYTERIAN CHURCH. However, in 1968 at the time of withdrawal, (see Findings No. 28 and 29) the Board of Trustees of such Corporation, sitting jointly with the Session of the local church, amended both its Articles of Incorporation and its By-Laws to remove the word "PRESBYTERIAN" from the corporate name and declared its intention to no longer adhere to the doctrine and discipline of the PRESBYTERIAN CHURCH. Such amendment to the Articles of Incorporation did not, however, alter or amend the purpose for which the corporation was originally formed as set forth in Article IV of the original Articles of Incorporation. Said Article IV provides as follows:

> "That the purposes for which this corporation is formed shall be the establishment and maintenance of a place or places for worship and instruction, and for the dissemination and spreading of the Christian Doctrine among the people of the world, and that this corporation does not contemplate pecuniary gain or profit to the members thereof; to acquire and hold the real and personal property belonging to, or occupied by or claimed

> by said unincorporated association, and to acquire by gift, deed, devise, or bequest property of every kind and any kind whatsoever."

13. Record title to the real and personal property described above has at all times since 1959 been vested in the COMMUNITY CHURCH.

14. At no time have either the Defendant COMMUNITY CHURCH, or its representatives, ever made a commitment or agreement in writing, or otherwise, that title to its properties would be held in trust for the Presbyterian denomination or any division thereof.

15. At no time was the COMMUNITY CHURCH required to convey legal title to any of its property in issue in this matter to the PRESBYTERY OF RIVERSIDE and no provision of the Constitution of the Presbyterian denomination has at any time required that the properties of local churches be held by its Presbyteries, or any other body representing the denomination, other than its local churches.

16. The COMMUNITY CHURCH, since its inception, has invited to membership persons from all Protestant denominations without any requirement of termination of membership in any other church or demonination, and has held itself out as being an interdenominational Community Church. Persons who have joined or attended the church who were of Presbyterian background were frequently outnumbered by persons who were members of other denominations. At times the membership of Presbyterian background was less than one-third of the total membership. Many who affiliated with the COMMUNITY CHURCH did so only on a seasonal basis. For a period of approximately ten years prior to 1966, each new member of the COM-

MUNITY CHURCH was given a Request for Membership form which stated on its fact that the COMMUNITY CHURCH was affiliated with the Presbyterian denomination.

17. At all times material to this litigation Plaintiffs were aware of the fact that the COMMUNITY CHURCH was so representing itself to the community.

18. No complaint of the course of conduct described in Finding No. 16 above was ever directed to the COMMUNITY CHURCH by representatives of the Plaintiff Presbytery.

19. Until recent years, and at least since the year 1928, the COMMUNITY CHURCH conducted an annual fund raising campaign within the Palm Springs community to raise money for its operating budget by donations from local residents. Many of these donations were made by persons who were not in any way connected with the church. These campaigns for funds were made strictly upon the basis that such donations were of a community wide benefit. Many people of different religious faiths were approached for donations to help in the maintenance of a non-denominational community church.

20. The COMMUNITY CHURCH conducted two major capital fund-raising drives to construct major facilities during the periods generally of 1957 through 1960 and 1961 through 1963. Such campaigns for funds were again conducted on a community wide basis and those soliciting funds on behalf of the COMMUNITY CHURCH represented to those being solicited that the COMMUNITY CHURCH was an inter-denominational and non-denominational community Protestant church.

21. Many members, officers, and trustees of the Defendant COMMUNITY CHURCH would not have solicited membership in the local church, solicited funds for its operating budget and building fund drives, and some would not have participated in other church activities, if they had known that the PRESBYTERY and the PRESBYTERIAN CHURCH claimed an implied trust interest in the COMMUNITY CHURCH properties.

22. With the exception of a small amount of money received from the Plaintiff PRESBYTERY OF RIVERSIDE early in its history, all funds used to purchase and improve properties of the COMMUNITY CHURCH came from its members or non-member individuals who resided and/or visited in the desert area of Riverside County and not from or through efforts of the Plaintiffs. All of the real and personal property described in Finding No. 6 above was acquired with money provided by members or friends of the COMMUNITY CHURCH.

23. Although prior to 1968 the COMMUNITY CHURCH was affiliated with the PRESBYTERIAN CHURCH, many of its members were unaware of this and joined the COMMUNITY CHURCH and actively participated in its functions believing in good faith that they were still members of the various faiths to which they previously belonged.

24. In and prior to the year 1967, disputes arose between the COMMUNITY CHURCH and the Plain-

tiffs and the PRESBYTERIAN CHURCH. As a consequence of these disputes, the Defendant COMMUNITY CHURCH sought to negotiate a settlement of its property rights with the Plaintiffs and for this purpose proceeded by filing with the Plaintiff PRESBYTERY, on or about June 27, 1967, a request to negotiate a peaceful withdrawal and by thereafter processing its request through the established ecclesiastical authorities of the Presbyterian denomination, thereby exercising all of its administrative remedies. As a result thereof, the COMMUNITY CHURCH, was given the right to file a petition on this matter directly with the General Assembly of the denomination. This was done and on May 21, 1969 said petition was denied on the ground that it had been filed by a non-member body.

25. The application made by the Defendant COMMUNITY CHURCH to the Plaintiffs for negotiation for peaceful withdrawal was made by officers of the COMMUNITY CHURCH pursuant to authorization by the church membership on June 25, 1967.

26. During the time the Defendant's request to negotiate a withdrawal was being considered, the Plaintiff PRESBYTERY OF RIVERSIDE appointed the Plaintiff ADMINISTRATIVE COMMISSION to assume control of the real and personal property of the COMMUNITY CHURCH and to continue the work of Plaintiff PRESBYTERY in the City of Palm Springs. Defendant COMMUNITY CHURCH denied the ADMINISTRATIVE COMMISSION access to said property.

27. (a) In May, 1968, officers of said COMMUNITY CHURCH requested Plaintiffs to delay efforts to take over the local church property and to direct

the activities of the COMMUNITY CHURCH through Plaintiff's ADMINISTRATIVE COMMISSION pending Defendant's petition being considered by the denomination's General Assembly in May of 1969. This request was refused by the Plaintiffs.

(b) At the time of such request by Defendant COMMUNITY CHURCH, Plaintiffs were subject to an injunction issued by the Superior Court of Riverside County restraining Plaintiffs herein from in any way interfering with the activities of Defendant Church which injunction was to remain effective until sixty (60) days after determination by the General Assembly. This injunction was to expire by its terms on July 20, 1968 which was subsequent to Defendant' request mentioned in Finding 27(a) above.

28. On or about May 28, 1968, after a refusal to delay action referred to in Finding No. 27 above, the Session of the COMMUNITY CHURCH pursuant to an earlier vote by the membership, where a very substantial majority favored such action, voted to withdraw from affiliation with the Presbyterian denomination and to direct its officers to notify Plaintiff Presbytery of such action.

29. The Session of the COMMUNITY CHURCH on June 8, 1968, sent a letter to the Plaintiff Presbytery renouncing said Presbytery's jurisdiction over the Defendant COMMUNITY CHURCH. The Session also sent a representative to a meeting of the Presbytery on June 8, 1968 to deliver to that body a copy of a resolution adopted by the local church Session on May 28, 1968 relating to the COMMUNITY CHURCH withdrawal from the Presbyterian denomination.

30. Neither prior to the dispute which led to the withdrawal of the COMMUNITY CHURCH from the

Presbyterian denomination nor prior to the actual withdrawal, was any communication ever directed to representatives of said COMMUNITY CHURCH by the PRESBYTERY or by any other governing body of the Presbyterian Church giving notice that the denomination claimed ownership or a trust interest in the COMMUNITY CHURCH properties. The Defendant COMMUNITY CHURCH had no notice or knowledge that the PRESBYTERY and the PRESBYTERIAN CHURCH claimed an implied trust interest in the local church properties.

31. The Constitution of the UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA provides that corporations be formed by each of the judicatories for the purpose, among other things, of holding property owned by the judicatory. The Constitution further provides that an individual church shall not sell, mortgage, or otherwise encumber any of its real property, and shall not acquire real property subject to an encumbrance or condition without the written permission of the PRESBYTERY. Likewise, the Constitution provides that individual churches shall not lease real property without the written permission of the PRESBYTERY. Further, the Constitution provides that whenever a particular church is formally dissolved by the PRESBYTERY or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other causes, such property as it may have, both real and personal, shall be held, used and applied for such uses, purposes and trusts as the PRESBYTERY may direct.

32. The Articles of Incorporation of the COMMUNITY CHURCH as originally drawn provided that the COMMUNITY CHURCH OF PALM SPRINGS

(PRESBYTERIAN) was an unincorporated association, existing and organized under and adhering to the doctrines and discipline of THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA. The Articles of Incorporation further provide that the corporation is at all times subject to and will adhere to the doctrines and discipline of THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA. The articles further provide that the admission, expulsion or suspension of members in the corporation shall be governed by the doctrines and discipline of THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA. Said PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA was the immediate predecessor in interest of THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA. On February 25, 1956, the articles were amended to provide that all property owned by the church was irrevocably dedicated to religious and/or charitable purposes, and upon liquidation the property would revert, transfer and inure to the benefit of THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA. The Bylaws of the corporation as originally established provided that they were subordinate to the Constitution of THE PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA. The Bylaws were amended in January of 1965 to have the word "United" inserted in the name of THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA wherever the same appeared in the records.

33. The COMMUNITY CHURCH appealed to the 180th GENERAL ASSEMBLY of the church and in an action dated May 21, 1968, the PERMANENT

JUDICIAL COMMISSION which is the judicial body of that judicatory, upheld the action of the lower judicatory. In its opinion the GENERAL ASSEMBLY stated that the local church had an absolute right to petition directly to the GENERAL ASSEMBLY for withdrawal.

34. The COMMUNITY CHURCH petitioned the 181st GENERAL ASSEMBLY of the church, and in an action taken on May 20, 1969, the Standing Committee on Bills and Overtures found that the petition was filed by an independent body which had renounced the jurisdiction of THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, and therefore the GENERAL ASSEMBLY could not hear the petition. This committee is one of the several committees through which the GENERAL ASSEMBLY, the highest judicatory of the church, performs its functions.

35. The Constitution of THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA provides that several different congregations are collectively one church. It further provides that appeals may be carried from lower to higher judicatories, until they may be finally decided by the highest judicatory, the GENERAL ASSEMBLY, which, under the terms of the Constitution, is deemed to be the united voice of the whole church.

36. The Permanent Committee on Conservation of Property is a legislative branch of the GENERAL ASSEMBLY. In an action of that committee dated May 16, 1968, the 180th GENERAL ASSEMBLY adopted a report of the Permanent Committee on Conservation of Property. The report specifically refers to a controversy between the PRESBYTERY OF RIV-

ERSIDE involving the property of the COMMUNITY CHURCH OF PALM SPRINGS (PRESBYTERIAN). The report states that the actions taken by the PRESBYTERY were grounded in the long-standing adherence of THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA to the principle that title to all property of the local church is held in trust for the benefit of the whole denomination.

CONCLUSIONS OF LAW

1. Defendant and Cross-complainant COMMUNITY CHURCH OF PALM SPRINGS, a California Nonprofit Corporation, is, and at all times material to this litigation was, the owner of all real and personal property described in Finding of Fact No. 6 above including any monies, securities, bequests, and gifts of property which may be in the possession of or which have been made to said COMMUNITY CHURCH OF PALM SPRINGS since this litigation commenced.

2. None of the Plaintiffs have any right, title, estate, lien, claim to or interest in, of any nature, in any of the properties referred to in Conclusion No. 1 above or any part thereof.

3. Fair, just and equitable determination of this case requires the application of neutral principles of law and the formal title approach and therefore the court concludes that no implied trust is applicable herein, and that none of the Plaintiffs have any right, title or beneficial interest whatsoever in said real and personal property under any such theory.

4. Based upon the Findings of Fact set forth above, the Plaintiffs, and each of them, are estopped from

asserting any claim whatsoever to said real and personal property.

5. Legal title to all of the real and personal property described in Finding of Fact. No. 6 above is vested in the Defendant COMMUNITY CHURCH OF PALM SPRINGS, a California Non-profit Corporation.

6. Said corporation and all of its assets are properly in the control of its membership acting by and through its duly elected Board of Trustees.

7. Defendant is entitled to judgment for its costs of suit incurred herein.

8. Defendant COMMUNITY CHURCH OF PALM SPRINGS is entitled to a judgment of quiet title against the Plaintiffs, and each of them, to all of the real property and personal property described in Conclusion of Law No. 1 above.

Dated: April 21, 1977.

/s/ John Hews
JUDGE OF THE SUPERIOR COURT

MOTION FILED
OCT 17 1979

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-558

PRESBYTERY OF RIVERSIDE, et al.,
Petitioners

v.

COMMUNITY CHURCH OF PALM SPRINGS,
Respondent

Motion for Leave to File Brief *Amicus Curiae* and Brief *Amicus Curiae* of the Lutheran Church in America in Support of Petition for Writ of Certiorari

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MOTION OF THE LUTHERAN CHURCH IN AMERICA FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Lutheran Church in America ("LCA") hereby moves the Court for leave to file the attached brief *amicus curiae*. Although counsel for petitioners has given his consent, counsel for respondent has withheld consent.

LCA's interest in this case is grounded in the similarities of its basic laws with the Book of Order of the United Presbyterian Church in the United States of America. The distinctions between these fundamental laws and the regulations at issue during the last term in *Jones v. Wolf*, 99 S.Ct. 3020 (1979), render this case vitally important to LCA.

WHEREFORE, the Lutheran Church in America respectfully requests that this Court grant leave to file the brief *amicus curiae* that is submitted herewith.

Respectfully submitted,

H. OBER HESS
Counsel for The Lutheran Church in America

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-558

PRESBYTERY OF RIVERSIDE, *et al.*,
Petitioners

v.

COMMUNITY CHURCH OF PALM SPRINGS,
Respondent

BRIEF *AMICUS CURIAE* OF LUTHERAN CHURCH IN AMERICA IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

INTEREST OF AMICUS CURIAE

The Lutheran Church in America ("LCA"), of which the Reverend James R. Crumley, Jr., is president, is an hierarchical church with over 6000 congregations or parishes divided into 33 synods. For reasons of concern for church government and administration and the avoidance of disruptive, if not chaotic, litigation the Lutheran Church in America is intensely interested that the Supreme Court of the United States grant certiorari in the California case of *Presbytery of Riverside v. Community Church of Palm Springs*. There are sufficient parallels between the basic laws of the Lutheran Church in America and the Book of Order of the United Presbyterian Church in the United States of America ("UPCUSA") to make it important to the LCA that the effect of the distinctions which lie between the regulations of the UPCUSA and those found in *Jones v. Wolf*, 99 S.Ct. 3020 (1979), be adjudicated.

JOINDERS IN THIS BRIEF

Amicus curiae has written requests of the following officers of the designated denominations to join in this brief, and their joinder is hereby indicated:

Rt. Rev. Charles H. Foggie, Secretary of the Board of Bishops of the African Methodist Episcopal Zion Church

Mr. T. V. Warnick, Stated Clerk of the General Assembly of the Cumberland Presbyterian Church

Most Rev. Metropolitan Philip, Primate of the Antiochian Orthodox Christian Archdiocese of North America

Most Rev. Archbishop Iakovos, Primate of the Greek Orthodox Diocese of North and South America

Archpriest Daniel Hubiak, Chancellor of the Orthodox Church in America

Rt. Rev. Dezso Abraham, Bishop of the Hungarian Reformed Church in America

Mr. James E. Andrews, Stated Clerk of the Presbyterian Church in the United States

Robert S. Wood, General Secretary/Stated Clerk of the General Assembly of the Second Cumberland Presbyterian Church

REASONS WHY THE WRIT SHOULD BE GRANTED

Amicus curiae respectfully submits that the Supreme Court of the United States should grant certiorari in this case, *if for no other reason*, to provide the Court an opportunity to clarify the application to the instant case of a number of points which it recently established in *Jones v. Wolf*, 99 S.Ct. 3020 (1979), after the final disposition of the instant case by the Supreme Court of California on May 10.

It is highly important to the hierarchical churches joining with *amicus curiae* and, in fact, to all hierarchical churches that such clarification be made in order to avert the state of chaos which unclear understandings of the reach of *Jones v. Wolf* and its modification of the settled principles of *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871), and *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), have already threatened. Some of the points (and how their application to the facts of the instant case may clearly distinguish *Jones v. Wolf*) will be reviewed seriatim.

1.

It is said in the Court's opinion in *Jones v. Wolf*:

> And here, as in *Presbyterian Church II [Presbyterian Church v. Eastern Heights Church*, 225 Ga. 259, 167 S.E.2d 658 (1969)], but in contrast to *Carnes [Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, *cert. denied*, 429 U.S. 868 (1976)], the provisions of the constitution of the general church, the Book of Church Order, concerning the ownership and control of property failed to reveal any language of trust in favor of the general church.

99 S. Ct. at 3024. What particularity of language is required to create the consequence of a trust for the denomination? It is submitted that the provisions of the following parts of the UPCUSA Book of Order (absent in *Jones v. Wolf*) should be adequate:

> (a) Chapter XXXII, Section 62.12, requiring presbytery approval for sale or encumbrance of a congregation's real estate.
>
> (b) Chapter XXXII, Section 62.11, giving the presbytery power to take possession of real estate of a congregation and to apply it or its proceeds for church purposes.

> (c) Chapter XI, Section 41.15, giving the presbytery power to supplant a congregation's officials by an administrative commision with full power to deal with property titled in the congregation.

This is a question which the Court should address in the context of the instant case.

2.

It is also said in *Jones v. Wolf*, 99 S.Ct. at 3025, quoting *Presbyterian Church v. Hull Church*, 393 U.S. 440 (1969):

> It is also clear, however, that "the First Amendment severely circumscribes the role that civil courts may play in resolving church property disputes." *Id.*, at 449, 89 S.Ct., at 606. Most importantly, the First Amendment prohibits civil courts from resolving church property disputes on the basis of religious doctrine and practice.

and in the next sentence, citing *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. at 724-25 (1976), the following is added:

> As a corollary to this commandment, the Amendment requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization.

The instant case, unlike *Jones v. Wolf*, involves the schismatic majority of the Palm Springs congregation which took all procedural steps within the hierarchy of the UPCUSA, and in conformity with its Book of Order, to seek separation from the Church and retention of the property. This involved an application to the controlling presbytery, an appeal to the General Assembly of the Church and a reference by the Assembly to the

Permanent Judicial Commission. Only after negative action at all these stages did the Palm Springs congregation, by a majority but far less than unanimous vote, repudiate the authority of the Church and secede therefrom. Thereupon, explicitly pursuant to the Book of Order, the presbytery designated an Administrative Commission to supplant the governing body of the congregation and to take over control of all its affairs and property in accordance with Chapter XI, Section 41.15 of the UPCUSA Book of Order.

It is essential to intelligent administration of every hierarchical church in the land that the Supreme Court adjudicate the efficacy of the regulations and ecclesiastical proceedings so taken by the UPCUSA in the instant case.

3.

Jones v. Wolf, 99 S.Ct. at 3027 (footnote omitted), also makes the following suggestion for the guidance of hierarchical churches:

> At any time before the dispute erupts, the parties can ensure, if they so desire, that the faction loyal to the hierarchical church will retain the church property. They can modify the deeds or the corporate charter to include a right of reversion or trust in favor of the general church. Alternatively, the constitution of the general church can be made to recite an express trust in favor of the denominational church. The burden involved in taking such steps will be minimal. And the civil courts will be bound to give effect to the result indicated by the parties provided, it is embodied in some legally cognizable form.

The instant case thus squarely presents the question, unanswered in *Jones*, What will constitute "some legally cognizable form"? Is the language of the Book of Order provisions referred to above — and the ecclesiastical proceedings conducted in conformity therewith — legally cognizable to create a reversion to the general church? It is submitted that it is abundantly adequate to that end. It is a serious question which merits this Court's further attention.

4.

As already stated, the secession here attempted was supported by a majority of those voting in the Palm Springs congregation. *Jones v. Wolf*, 99 S.Ct. at 3027-28, says this is not conclusive:

> Most importantly, any rule of majority representation can always be overcome, under the neutral principles approach, either by providing, in the corporate charter or the constitution of the general church, that the identity of the local church is to be established in some other way, or by providing that the church property is held in trust for the general church and those who remain loyal to it.

It is urgent that this Court deal with the application of this rule to the instant case. Here, unlike *Jones*, the articles of incorporation of the local church contained these significant clauses:

> Sixth: That this corporation shall be at all times subject and adhere to the doctrines and discipline of the Presbyterian Church of the United States of America. [Now by name change United Presbyterian Church in the United States of America.]
>
> Eleventh: That all property now owned or hereafter acquired by said corporation is and shall be irrevocably dedicated to religious and/or chari-

table purposes, and upon the liquidation, dissolution or abandonment of said corporation, all of such property subject only to prior transfer or encumbrance, in and about the carrying out of such purposes will revert, transfer and inure to the benefit of the Presbyterian Church in the United States of America, a corporation.

It is submitted that these provisions distinguish the instant case from *Jones* in a decisive way and that the Court should adjudicate the consequence of the distinction. Furthermore, the provisions of the Book of Order here involved, as well as the ecclesiastical proceedings availed of by the Palm Springs congregation, are decisively different from those applicable in *Jones* insofar as any recourse to majority rule is concerned. Indeed, in *Jones* the schismatic congregation pursued no ecclesiastical procedure at all. This distinction also merits the consideration of this Court.

CONCLUSION

For the foregoing reasons *amicus curiae* respectfully urges this Court to grant a writ of certiorari and to reverse the decision below.

Respectfully submitted,

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